THE PROJECT TO REVIEW
ADULT GUARDIANSHIP

~

FRAMEWORK DOCUMENT

31 JULY 1991

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THE PROJECT TO REVIEW ADULT GUARDIANSHIP

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31 July, 1991

Dear friends,

On behalf of the Guardianship Committee it gives me great pride to release this report to government and the public. Much work still needs to be done, but with this Framework Document we can begin to implement the recommendations of the community.

The Guardianship Committee recognizes that both community and government need to change the way we treat adults who need assistance to make decisions. We are eager to begin the next phase of our work and we look forward to working equally and cooperatively with government in the implementation phase.

Almost 1,300 British Columbians have contributed approximately 19,000 hours achieving the consensus reflected in this report. We are committed to continuing our open and inclusive process as we refine, develop, implement, and evaluate the recommendations in this Framework Document.

Finally, the Guardianship Committee gratefully acknowledges the generous financial contributions of the Law Foundation and the Notary Foundation. Without their help this Framework Document would not have been realized.

Yours very truly,

Dr. Stephen Kline
Chair, Guardianship Committee

The Project has been made possible through the generous financial assistance of The Law Foundation. We gratefully acknowledge the British Columbia Association for Community Living for sponsoring the project and the Community Legal Assistance Society for housing the project.

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INTRODUCTION:

This project was a unique community consensus building project. In the beginning of this process several members of the government told us that we could not and would not reach consensus. They said that the needs and views of this diverse group of people were too disparate.

In fact, the only way we COULD reach consensus was to sit in room after room, after room all around the province and listen to each other's personal stories and views.

We listened and talked and learned to understand each other's point of view.

The result is this report. The recommendations are flexible and responsible. Government will have to integrate a wide range of legislation, regulations and policies.

The recommendations are based on the assumption that people are capable of making decisions. Some need more support than others. And most people have a network of natural support that is working. Let's help that supportive network and not get in its way.

When this natural decision making process is no longer working, something will trigger a need for action. Then other resources should kick in in the least intrusive manner.

Government services, an assessment of the adult and Court processes are the most expensive and least desired interventions.

This is the basis for our report. We take great pride in presenting our recommendations to government and the public.

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HISTORY OF THE PROJECT AND THE NEED FOR REFORM

In the spring of 1989, Al Etmanski, then the Executive Director of BC Association for Community Living, invited a number of community organizations and interested individuals together to discuss adult guardianship.

Each of the people present at that first meeting agreed that the adult guardianship legislation in B.C. (Patients Property Act and Power of Attorney Act) was obsolete and did not represent the shared values of the group. These values included the promotion of human dignity and procedural fairness in processes which affect the liberty of individuals. There was agreement that the legislation failed to meet the needs of people affected, and yet there were differences among the groups as to what the problems were and how to solve them.

Some of the criticisms of existing adult guardianship legislation and systems are:

* The Patients Property Act, which sets out the conditions and requirements for Guardianship, is based on the Lunacy Act of 1897.

* There is no requirement to determine the extent to which an adult actually requires someone to take over his or her life decisions.

* It is assumed that an adult is incompetent once the issue is before the courts. This is contrary to a basic understanding in law which presumes everyone to be competent.

* A person is declared to be either totally competent or totally incompetent to manage his or her person, affairs or both. This is unacceptable to the community.

* Current legislation does not conform to the Canadian Charter of Rights and Freedoms.

A 1987 study by Glyn Davies and Lesley Taylor examined 500 applications for private committeeship made to the British Columbia Supreme Court in the period 1966-1987 and the resulting orders. It revealed that most individuals were never served with the documents related to incompetency; were never advised that a hearing was taking place; were not represented at the hearing by legal counsel, and were not present at the hearing. Few incapacitated persons were served with the incompetency order. Medical evidence introduced at the hearing was non-specific and conclusory and in some cases, non-existent. Hearings were short - usually less than five minutes.

It concluded by saying that statutory reform is critical and recommendations regarding evidence, due process standards and the planning and review processes should be made with a renewed emphasis on the needs of adults who have disabilities.

Dr. Rob Gordon, Professor of Criminology at Simon Fraser University, reports that five things are propelling the process to reform provincial legislation:

1. the aging population;
2. the process of de-institutionalization;
3. growing concern about elder abuse and neglect;
4. the advent of the Charter of Rights and Freedoms;
5. increasing criticism of existing adult guardianship legislation and systems.

In subsequent meetings the original group discussed efforts to reform guardianship legislation in other jurisdictions, most notably Ontario. It was disappointing to learn that, despite an enormous effort on the part of a large group of dedicated people, real reform had been stymied by groups who either had not been part of the inquiry, or who felt that their concerns had not been addressed.

The Guardianship Committee wanted to avoid the problems experienced in Ontario and concluded that this could be achieved by creating as broad a coalition as possible, with a common goal of working towards reform of the adult guardianship laws in B.C. Thus was born the Project to Review Adult Guardianship.

The Law Foundation funded an initial 6 month research phase. At the conclusion of the research the Law Foundation funded the Project for 18 months, $228,000. The Notary Foundation provides supplemental funding. The Guardianship Committee gratefully acknowledges their financial support.

The Interministry Committee on Issues Affecting Dependent Adults and the Guardianship Committee have an excellent on-going working relationship.

AN OVERVIEW OF THE PROJECT

MISSION STATEMENT: To develop and reform legislation, guidelines, policies, procedures and practices encompassing the full range of support, advocacy and substitute decision making for adults.

GOAL: By the next provincial election day to have secured a concrete commitment from both sides of government to implement our recommendations for support, advocacy, and substitute decision making with the appropriate financial resources.

MEMBERSHIP as of July 30, 1991 is approximately 1,300 people around the province. The community has given approximately 19,000 hours of volunteer time. People participate because of their interest, expertise and/or experience, not as necessarily as representatives of organizations. The process is inclusive.

Committee members are elderly people, people with disabilities, family members, service providers, health professionals such as doctors and nurses, and lawyers and notaries.

PEOPLE AFFECTED by the discussions are elderly people, people with a mental illness, a mental handicap, a degenerative illness such as Alzheimer's Disease, AIDS, Parkinson's Disease, Huntington's Chorea, Multiple Sclerosis, a head injury or stroke, and people with a severe physical handicap.

DECISION MAKING: All decisions regarding the recommendations are made by the Guardianship Committee not by any Steering Committee, Executive Committee, task group or working group. This principle is critical to the consensus building process.

CURRENT LEGISLATION BEING DISCUSSED:

Provincial Legislation:

* The Patients Property Act
* the Public Trustee Act
* the Power of Attorney Act
* the Mental Health Act

Federal Legislation:

* the War Pensions and Allowances Act
* the Old Age Security Act

ISSUES BEING DISCUSSED:

* Advocacy
* Consent to Medical Treatment
* Living Wills and Advance Medical Directives
* Protection of Vulnerable Adults legislation

THE CONSENSUS-BUILDING PROCESS:

In consultation with the Interministry Committee on Issues Affecting Dependent Adults, the community selected topics for discussion which led to the development of ten Trigger Papers. These papers outlined the issues, systems in other jurisdictions, and Canadian precedents. Questions were developed. Ten well-attended Discussion Workshops were held in the Lower Mainland.

A draft paper synthesising these public discussions was distributed for comments. Further papers were developed, distributed and discussions continued. A draft paper was distributed in May to all 1,300 members of the Guardianship Committee, and their input was sought in preparing the final submission to government.

Regional Guardianship Committee Meetings:

13 Community Forums were held outside the Lower Mainland. Approximately 550 people attended these forums.

Presentation to the Guardianship Committee:

45 presentations have been made to community groups. 23 presentations have been made to the Guardianship Committee.

Royal Commission on Health Care and Costs:

In its final report The Royal Commission on Health Care and Costs will recommend that the provincial government continue to work with the Guardianship Committee to create and implement new, plain language, adult guardianship legislation and amend existing legislation and programs to assist and support adults who are not capable of making certain decisions for themselves.

Involvement of Organizations:

Most provincial legal, health and senior's associations are involved in this project. This includes, The B.C. Health Association, The B.C. Medical Association, The B.C. Registered Nurses Association, the Plain Language Institute, the Canadian Bar Association (Legislative and Law Reform Committee, Wills and Trusts Subsection, Health Subsection and Civil Liberties Subsection), Old Age Pensioners Organization, Senior Citizens Association, and the B.C. Association for Community Care.

Major non-profit organizations are also participating - this includes the B.C. Association for Community Living, Community Legal Assistance Society, Canadian Mental Health Association, B.C. Head Injury Association, B.C. Coalition for people with Disabilities, Parkinsons Association, Huntingtons Disease Association, Alzheimers Association. Many representatives from different churches are involved.

RECOMMENDATIONS FOR GOVERNMENT

ON-GOING RELATIONSHIP WITH THE GUARDIANSHIP COMMITTEE:

We recommend that the Government continue to work with the Guardianship Committee through the adoption and implementation of the recommendations.

LEGISLATION:

We recommend that the Government develop new, plain language legislation consistent with the recommendations of the Guardianship Committee. Please see attached section on Recommendations for Legislation.

FINANCIAL RESOURCES:

It is imperative that the Government allocate the appropriate financial resources when implementing these recommendations.

LINE MINISTRIES:

We recommend that the Government review and revise their own policies, protocols, systems and practices within the Ministries of Health, Social Services, Attorney General, and any other Ministry involved, in order to meet the principles and standards outlined in these recommendations.

CONTRACTING:

We recommend that the Government review and revise existing contracts and that the Government only contract with individuals, agencies, and institutions that meet the principles and standards found in these recommendations.

RESEARCH AND PILOT PROJECTS:

We recommend that the Government work with the Guardianship Committee to coordinate, develop, implement, evaluate, and disseminate information about pilot projects and research arising from these recommendations.

PUBLIC AND PROFESSIONAL EDUCATION:

We recommend that the Government work with the Guardianship Committee and other community organizations to develop, implement and evaluate public and professional education and certification programs. It is especially important to educate the public on the mechanisms that lead to the most self-determination and autonomy for an adult. A priority will be to educate the public about Representation Agreements for Personal Care and Representation Agreements for Financial Affairs, and a program to deal with abuse, neglect and self neglect.

REGIONALIZATION:

We recommend that the Government recognize regional differences and concerns and develop policy and systems appropriately.

ADVOCACY OFFICE:

We recommend that the Government work with the Guardianship Committee to establish and fund an Advocacy Office. It must be established as a Community office rather than a Government Office. The establishment of this office will require much community input.

THE OVERSEEING OFFICES:

We recommend that the Government establish an Office of the Public Trustee and an Office of the Public Guardian. The Office of the Public Trustee and the Office of the Public Guardian will have very separate functions, but there may be merit in having the offices combined. These Offices should be independent of Government, and have staff and a Board of Directors that reflect the people being served. Elderly people and people with disabilities should be hired.

We recommend that the Ombudsman's Office have an increased role in monitoring the Office of the Public Trustee and Public Guardian when it is acting as Trustee or Guardian. We also recommended that the Ombudsman's jurisdiction be increased to include hospitals, and related facilities and organizations.

These Offices must coordinate their work with the Advocacy Office.

MENTAL HEALTH ACT:

We recommend that the Government ensure that the proposed, new Mental Health Act is consistent and parallel with these recommendations. Further, it is recommended that the services, policies, protocols, practices and contracting by the Department of Mental Health Services in the Ministry of Health and related departments, institutions and agencies (both non-profit and for-profit) meet the principles and standards set in these recommendations.

RECOMMENDATIONS FOR LEGISLATION

Legislation should be developed that covers all issues related to adults who are incapable of making certain decisions.

This legislation should be reviewed and revised throughout the first five years of implementation.

This legislation should be in plain language. Great care should be taken to use terminology acceptable to the people affected by the legislation. This report reflects the words used by the community during their discussions.

All legislation must be based on the following philosophical statement and Guiding Principles:

PHILOSOPHICAL STATEMENT

We believe in empowering and affirming the legal status of adults who may become vulnerable to guardianship orders, powers of attorney or other formal or informal arrangements while ensuring fundamental, individual rights and freedoms for all including a respect for the principles of self determination and autonomy.

GUIDING PRINCIPLES

1. **The principle of self-determination:**

   All adults have the right to self determination. This right must be capable of withstanding scrutiny under the Canadian Charter of Rights and Freedoms. The freedoms protected include: freedom of conscience and religion, freedom of thought, belief, opinion and expression, freedom of peaceful assembly, freedom of association, and in the right to pursue the gaining of a livelihood, the right to life, liberty and security of the person, and the right to the equal protection and equal benefit both before and under the law.

2. **The principle of the right to be free of abuse, neglect and victimization**

   All adults have the right to be free of abuse, neglect and victimization.

3. **The principle of the presumption of being capable to make decisions**

   All adults are entitled to the legal presumption that they are capable of making decisions.

4. **The adult is enabled to make decisions**

   Society and the law have the obligation to provide supports such that all adults have choice and can exercise the right to make informed decisions. The form of that support can be the advice, advocacy, support and affection of family and friends chosen or pre-designated by the adult. All adults shall be given the opportunity to express themselves in an individual way and to the extent possible.

5. **Appropriate supports diminish need for legal intervention**

   The State must provide adequate funding and services to minimize the vulnerability of adults and the need for the extraordinary step of removing an adult's right to self-determination.

6. **The law as a last resort**

   In order to respect and preserve the legal rights of adults, any legislative or legal response that establishes a substitute decision making process shall only be invoked as a last resort and it must be based on proof that the process is no longer empowering the adult.

7. **The least restrictive and intrusive alternative**

   Any intervention by the law in the decision making process of an adult shall be the least restrictive and intrusive form of support, assistance or protection.

8. **The principle of being accessible**

   All procedures, protocols and processes developed shall be accessible including: intellectually, psychologically, physically, culturally and financially.

The scope of recommended legislation includes:

Self-determination through the pre-appointment of a Representative to make decisions about financial matters and/or personal care (including medical treatment and psychiatric treatment) when an adult is no longer capable to make those decisions.

A Registration of Support Networks that will give status to people close to an adult.

The building, support, re-establishment, and recognition of an adult's natural advocates and support network when that adult is vulnerable to the loss of rights through the appointment of a court-ordered Decision Maker.

Court-ordered Decision Making that is "decision specific" and time limited.

Emergency procedures, intervention and provision of community-based services to an adult who is being abused, neglected or who is self-neglecting and is not capable of making decisions about that abuse, neglect or self-neglect.

Advocacy, rights and legal representation.

A process which outlines Standard Assessments of an adult's capability to make certain decisions.

Mediation, Due Process and Court Procedures which will withstand the scrutiny of the Charter of Rights and Freedoms.

Procedures for Consent to Health Care (including psychiatric treatment) in emergency and urgent situations for an adult who is incapable of giving or withholding consent to that health care decision.

Involuntary detentions and treatment of an adult who is a danger to him or herself or to others and is incapable of making decisions about that detention or that treatment.

Enabling Legislation:

Legislation must be developed providing for the Office of the Public Guardian, Public Trustee and the Advocacy Office. These enabling powers need to include the power to investigate abuse, neglect and self-neglect as defined in the chapter on this topic.

The Ombudsman Act should be revised as it is related to adults who are incapable of making certain decisions.

Protection from misconduct and misappropriation:

Legislation must ensure that enforceable duties and other provisions are in place to protect people, prosecute abusers and recover assets lost through misconduct and misappropriation.

Limitations

All legislation must be revised to ensure that there are appropriate limitation periods for adults who are or who later become not capable of making certain decisions.

Land Title Act:

Sections 56 and 57 of the Land Title Act need to be amended to reflect the recommendations in the chapter on Future Planning.

Family Relations Act Section 49:

Section 49 (4)(c) of the Family Relations Act should be repealed. This states that:

> (4) Where a spouse or former spouse
>
> (c) is a mentally incompetent person,
>
> the Supreme Court may, on application, order the appropriate registrar to cancel or postpone the notice of marriage agreement or separation agreement or discharge the registration under subsection (6), as the case may be.

Power of Attorney Act:

Section 7 of the Power of Attorney Act shall be repealed as outlined in the chapter on Future Planning.

Supreme Court Rules, Rule 6 and Rule 27 (11):

The adult's Representative or Registered Support Network shall be entitled to act as Guardian ad litem.

Rules 6 and 27(11) need to be reworded.

Guaranteed Available Income for Need Act section 24 (2)

This section reads:

> 24(2) The director in his discretion may authorize an administering authority to provide payments, in such amount as the director may deem appropriate, directly to the operators or owners of a residential program for recipients. These payments may be additional to any assigned benefits which may be receivable by the operators.

We recommend that it is the adult who may choose to receive the cheque or to have it sent directly to the operator of the facility in which they reside. This should not be at the discretion of the director.

Workers Compensation Act:

It appears that certain provisions, particularly Section 35, of the Workers Compensation Act may be contrary to Section 15 of the Charter of Rights and Freedoms and the principles found in these recommendations. We recommend that these provisions be reviewed and revised.

Health Act:

We recommend that the sections in the Health Act dealing with self neglect shall be repealed. We have made recommendations about this issue in the Chapter on Abuse, Neglect and Self-Neglect.

The section on Detention for Treatment shall be amended in keeping with the recommendations in this report.

The Ombudsman Act:

The Ombudsman Act should be revised to include the power to investigate hospitals and hospital boards and the power to monitor the Office of the Public Trustee and the Office of the Public Guardian when they are making decisions in the default capacity.

Reciprocity Agreements:

Processes need to be implemented to ensure that there are suitable reciprocal guardianship arrangements with other provinces. Section 31 of the Patients Property Act needs to be revised and become part of new legislation.

Related legislation:

Other statutes will have to be changed to meet the standards set out in these recommendations. Other examples might include the Trustee Act, Wills Variation Act, Property Law Act and the Mental Health Act.

Transitional Provisions:

Processes need to be implemented to ensure that existing Committeeship orders and other forms of 'guardianship' are, within a set period of time, converted into orders or documents that correspond with the new legislation. For example, it will be necessary to review all existing committeeship orders and require all committees to apply to the Supreme Court within one year for new authority. It will also be necessary to provide appropriate assistance and educational material, for example, self-help kits. It should be noted that there are currently 2930 court-appointed private committees and 8626 incapable clients of the Public Trustee.

Federal legislation:

Federal Legislation, including the Old Age Security Act and the Federal War Pensions and Allowances Act, should be examined and changes made to bring the statutes in keeping with our recommendations. It should be noted that this is not the responsibility of the Government of B.C.

Specific Recommendations about the Mental Health Act Reform:

The Mental Health Act should be revised. It should be consistent with the other legislation. Issues related to mental illness such as future planning, consent to health care and psychiatric treatment, supports, advocacy and intervention for someone with a mental illness who is being abused and neglected or who is self-neglecting are outlined in this report.

In the Throne Speech the government made a commitment to revise the Patients Property Act, the Power of Attorney Act, the Public Trustee Act, and the Mental Health Act. Revision of all four statutes provides a unique opportunity to develop consistent plain language legislation, policy, practices, protocol, systems and standards. We know of no other time in North America in which this has taken place.

RECOMMENDATIONS FOR SOCIAL POLICY AND FUNDING CHANGES

Currently the 'system' makes decisions for adults who appear to be incapable of making their own decisions. We strongly recommend that all Ministries of government make major social policy and funding changes in order to shift the decision making power back to the adult from the State.

The following is a series of examples in which decision-making power should be given back to the adult. Some solutions are suggested.

We urge government and service providers to carefully think about this shift of decision-making power. We urge government and service providers to change legislation, policies, protocols and funding practices to reflect the adult's right to make decisions for themselves and enable them to be less reliant on government systems.

Example: A profoundly mentally handicapped adult person does not agree with the social worker's decision that he should attend a behaviour modification program. A meeting is called and 6 people attend - a representative of the Ministry of Social Services and Housing, the social worker, the facility operator, the proposed specialist, the adult's doctor, the adult. The adult still doesn't agree with the group, so a mediation process is established. The adult still doesn't agree, but the decision is made despite his protests.

Example: A child is apprehended when her parent becomes mentally ill, despite the fact that the neighbour has agreed informally to take care of the child should the parent become ill.

Although an adult may informally pre-appointment a guardian through a Deed of Appointment, this still does not prevent the children from being apprehended. A legal guardian can be named for children in a will, but it is not possible to appoint a legal guardian for children while the parent is alive but not capable of caring for children. The 'system' has that power, not the adult.

Example: An adult living in Glendale is moved to a group home. Decisions are made by the 'system' - whether the adult moves or not, when the move will take place, and where the adult will move. The adult does not make these decisions.

If the adult had money, he or she could decide for themselves where they would live. Because the 'system' has the money and the adult has none, the adult has no choice and therefore, no decision.

Example: A person with a mental illness is put into hospital because she is depressed and suicidal. The doctor proposes a treatment. The adult understands her illness and understands the risks and benefits of the proposed medication. She decides that she would rather have the depression than the side effects. She also acknowledges that she needs to be kept safely while she is suicidal. The director of the mental health facility overturns her decision and the doctor treats her despite her protests.

Example: An adult is moved to a long term care facility. The director of the GAIN Act decides to send her GAIN check directly to the facility operator. The facility has requested that it receives the payment directly from the Director because it is more convenient. The adult is capable of managing her money but is denied the opportunity to pay her own bills. The adult believes that the service she is receiving at the facility is terrible, yet cannot withhold her rent cheque to ensure that she gets get better service.

Example: A man goes to a lawyer to develop an enduring power of attorney. The adult is non-verbal and has an unusual way of communicating. He smiles to say "yes" and turns his head very slightly to say "no". The lawyer knows this because a mother has told her this. The adult certainly cannot sign his name and cannot even make an "x" on a paper. He can touch his tongue to a paper - this is his 'signature'. The lawyer refuses to accept instructions from this client; the situation seems fraught with difficulties. It will take too much time. She cannot be sure that the adult is 'competent' to instruct her. The mother might be coercing the son. And what about the signature?

Example: A severely physically disabled man needs homemaker services. He is totally dependent on a respirator to live and needs help to get out of bed in the morning, use the toilet, bathe, and to get into bed at night. He is assessed and a homemaker is assigned. The homemaker is unacceptable to the man. He would like to choose his own homemaker for these very personal and intimate services. He has no choice because the 'system' has the money to pay the homemaker and he has none.

Recommendations

Social policy changes need to be made in order to shift decision making back to the adult. Some examples of social policy changes are:

1. Government service providers cannot act as the service provider, the evaluator and the decision maker, these functions must be divided up.

2. The adult's right to plan for periods of incapacity should be allowed in law and encouraged in policy and practice. Recommendations can be found in the chapter on Future Planning.

3. There are several examples in B.C. and elsewhere in Canada of brokerage services and individualized dollars. We support these programs and recommend that government reallocate service delivery dollars to individualized funding.

4. The right for a capable adult to refuse intervention or treatment should be legislated.

5. Under the GAIN legislation we recommend that it should be the adult's option whether he or she receives the money or whether the money should go directly to the facility. If the adult is found to be not capable of managing their finances, someone else should be appointed to manage their finances. The adult should always be able to retain the power to withhold money to ensure good services. Too often an adult is put in a facility, has no money, and therefore has no power.

6. Alternate forms of indicating a choice or a decision must be encouraged and recognized. This is especially important for non-verbal adults. Lawyers, physicians and other professionals should have training in order to feel comfortable providing service to adults with disabilities.

7. It is critical that we encourage more information, education and training of adults to make their own decisions. This includes giving them a choice. An adult who is not able to make a certain decision might have the capability of making that decision in the future with more information or training.

FUTURE PLANNING FOR PERSONAL CARE, HEALTH CARE AND FINANCES

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A FRAMEWORK DOCUMENT

FUTURE PLANNING

FOR PERSONAL CARE, HEALTH CARE AND FINANCES

INTRODUCTION:

Legislation must be developed which provides for future planning mechanisms. People want to have as much control as possible about what happens to them if they become unable to manage their financial affairs, personal care, health care and/or guardianship of their minor children.

With mechanisms in place to permit future planning, there will be a decrease in the need to depend on substitute decision making legislation. This should result in a more orderly, expedient and inexpensive way to help adults who are not able to make their own decisions.

Future planning mechanisms need to be easy to understand, access, and to arrange. These mechanisms must be flexible while providing safety features to guard against abuse. There is a delicate balance between providing safeguards and maintaining easy access to future planning mechanisms, but it is extremely important that a balance is achieved.

Current mechanisms, such as the enduring power of attorney for financial affairs are flexible, quick to access, and relatively inexpensive. Equivalent mechanisms need to be developed for personal care, health care, (including psychiatric treatment) and/or guardianship of minor children.

Currently, the enduring power of attorney is effective upon execution of the document, but most people would prefer that it become effective when they become incapable of managing their affairs. Therefore, there must be a mechanism which allows adults to chose when the document shall come into effect.

Currently people are able to use their will to plan for the guardianship of their minor children if they die before their minor children have become adults. A mechanism must be available in order to arrange for the guardianship of minor children in the event a parent is not capable of caring for minor children, either permanently or temporarily.

INFORMAL ARRANGEMENTS:

The Ulysses Contract

The Ulysses Contract is an informal device which can be used by adults with a mental illness who experience episodes in which they are not capable of making certain decisions.

At a time when the adult is capable, the adult enters into an agreement, the Ulysses Contract, with a number of people. Each person agrees to be responsible for a specific duty on behalf of the adult at a time when the adult is not capable of making these decisions.

These contracts now are informal and the people who are participants to the contract do not have any legal authority to make the decisions they are being asked to make.

Specific duties would be divided among participants. The Ulysses Contract would contain the adult's instructions on issues such as:

1. **Treatment:**
   What signs or behaviours should trigger the action of the participants to the Contract, and what treatment decisions did the adult specify for these behaviours? Who should be notified? What medications have or have not worked?

2. **Communication:**
   Who should the physician listen to from the adult's social network? Who needs to know if the adult becomes acutely ill? Who should liaise with whom?

3. **Childcare:**
   Who should take responsibility for the care of minor children so as to prevent neglect, danger, or the unnecessary intervention of social services?

4. **Finances:**
   Who will take responsibility for paying bills, doing the banking, paying the rent, etc.?

5. **Homecare:**
   Who will take responsibility for shelter needs, animals, plants, etc.?

6. **Work:**
   What steps can be taken to prevent consequences from the illness having an effect on job security? Who at work should know about the adult's illness?

The important features of the Ulysses Contract are that it reflects the expressed wishes of the adult, that it allows the adult to choose the people who would support him or her in a crisis, that it can be limited to the times when the adult is not capable of making decisions, and, that it greatly reduces the stress on both the adult and his or her friends and family, and reduces dependence on the formal service delivery system.

We strongly recommend that adults have the right to plan for periods of incapacity. We urge service providers to facilitate the development of these plans. We recommend that this concept be incorporated into policy and practice in Mental Health Services.

The Representation Agreement may be useful for adults who wish to enter into a Ulysses Contract but want it to be legally binding. Adults who wish to have an informal Ulysses Contract could do so, but would have to realize that the agreement is not legally binding. The Representation Agreement can be drawn up to achieve many of the goals of the Ulysses Contract and deter unwanted and perhaps costly intervention by the State.

Joint Bank Accounts and Joint Ownership:

It is equally important that people are made aware about other mechanisms for financial future planning, such as joint bank accounts and joint ownership. These concepts are an important part of future planning. The public should be educated about the limitations and benefits.

LEGISLATION:

The legislation permitting the creation of this future planning shall be separate from the current Power of Attorney Act. The current Power of Attorney Act shall be amended to remove provisions permitting an enduring power of attorney. Section 7 of the Power of Attorney Act shall be repealed.

New legislation, entitled **THE ADULT SELF-DETERMINATION ACT**, must be developed to permit an adult to draw up a **REPRESENTATION AGREEMENT** whereby someone called a **REPRESENTATIVE** is chosen by an adult who is the **GRANTOR**, to make substitute decisions for the adult when the adult is no longer capable to make these decisions.

There shall be two separate documents: a **REPRESENTATION AGREEMENT FOR FINANCES** which involves financial and legal decision making; and a **REPRESENTATION AGREEMENT FOR PERSONAL CARE**, which involves medical treatment, psychiatric treatment, personal care and/or guardianship of minor children. There shall be a **REPRESENTATIVE FOR FINANCIAL AFFAIRS** and a **REPRESENTATIVE FOR PERSONAL CARE.**

CAPABILITY TO GIVE INSTRUCTIONS

An adult is presumed to be capable of giving instructions for the preparation of a Representation Agreement.

If in the course of taking instructions, there is a concern about whether the adult is capable to give instructions for the preparation of a Representation Agreement, there will be clear guidelines which must be followed.

Financial Affairs

To be effective, a Representation Agreement for Finances must be granted by an adult who:

- is acting on his or her own free will and who is free from undue influence and duress

- knows what kind of property he or she has and its approximate value
- is aware of obligations owed to his or her dependants
- knows that the Representative will have the authority to do anything on the adult's behalf that the adult could have done if the adult was capable except anything specifically excluded in the Representation Agreement.
- knows that the Representative must account for his or her dealings with the adult's property
- knows that he or she may, if capable, revoke the Representation Agreement
- appreciates that unless the Representative manages the financial affairs prudently, the value will decline
- appreciates that the Representative could misuse the authority given through the Representation Agreement

Personal Care

To be effective, a Representation Agreement for Personal Care must be granted by an adult who:

- is acting on his or her own free will and who is free from undue influence and duress
- knows what kinds of personal decisions the Representative will have the authority to make
- knows that the Representative will have the authority to do anything on the adult's behalf that the adult could have done if the adult was capable except anything specifically excluded in the Representation Agreement.
- knows that the Representative must account for his or her decisions
- knows that he or she may, if capable, revoke the Representation Agreement
- appreciates that the Representative could misuse the authority given through the Representation Agreement

An adult is capable of revoking a Representation Agreement if the adult is capable of giving the Representation Agreement.

Advisers need to learn more about adults with disabilities, as communication needs differ with each individual. A difficulty with communication should never prevent an adult from planning for the future using a Representation Agreement.

When there is concern about an adult's capability to execute a Representation Agreement, the standard method used to determine the capability of the adult to give these instructions should be utilized. The assessment shall be kept confidential.

There shall be a mechanism in place for adults who have been determined to be incapable to execute a Representation Agreement. This is discussed in the chapter on Registered Support Networks.

If a Grantor is determined to have been incapable of entering into a Representation Agreement at the time he or she did enter into a Representation Agreement, anyone may apply to court to have the Representation Agreement declared void.

THE DOCUMENT:

The document shall be in standard form. A draft form is attached. We recommend that it is tested using focus groups.

The Representation Agreement shall be in writing and be signed by the Grantor.

If the Grantor is physically incapable of signing the document, the document may be signed by another, on behalf of the Grantor in the Grantor's presence and under the direction of the Grantor, by a person other than the Representative, and shall be witnessed.

The Representation Agreement should set out the specific areas for which authority is given or restricted to the Representative.

The Representation Agreement shall clearly set out the standard and mandatory clauses, and clearly set out the clauses for which the Grantor has some choice.

The Representation Agreement shall permit the appointment of an Alternate Representative.

The Representation Agreement shall set out whether the Representative may delegate any authority granted under the Representation Agreement.

The Representation Agreement shall give the Grantor choices as to when the Representation Agreement is to be effective.

The Representation Agreement For Finances shall include a warning that the Agreement is effective only upon registration.

The Representation Agreement For Personal Care shall include a warning that although the Agreement can be acted upon without registration, it must be registered to ensure that the Representative will be notified if the adult is in need of the

Representative's assistance. This provision is to ensure that a Grantor's efforts to pre-plan for a personal care decision, is not frustrated because the need to use the document arose before there was an opportunity to register the document.

Registration would be required within 48 hours. A mechanism to ensure or to enforce the registration after use needs to be developed.

WITNESSES:

There shall be one witness to the execution of a Representation Agreement.

The witness must be nineteen years or older.

The witness will be required to sign a Certificate of Witness to ascertain that:

1. the Grantor has read the Representation Agreement,
2. the Witness has no reason to believe that the Grantor is incapable of entering into a Representation Agreement
3. the Grantor has signed it on his or her own free will.

There are certain people who will not be permitted to act as witnesses:

> The witness shall not be the Representative or the spouse or partner of the Representative.
>
> The witness shall not be the spouse or partner of the Grantor.
>
> The witness shall not be a person who is related to the Grantor or the Representative by blood, adoption or marriage or a person to whom the Grantor or Representative has demonstrated a settled intention to treat as a child of his or her family.
>
> The witness shall not be an employee (manager, agent) of the Representative.
>
> The witness shall not be a person whose property is under guardianship or who has a guardian of the person.

If it is later determined that these witnessing requirements have not been followed, the Representation Agreement is not valid. Anyone may apply to court for clarification of the validity of the Representation Agreement.

COMPENSATION AND COSTS:

A Representative is not entitled to remuneration for his or her services as Representative, unless expressly granted the right to remuneration in the Representation Agreement.

The costs of all applications to Court under the Adult Self Determination Act are in the discretion of the Court and the Court may order that the costs of the application be fully paid from the estate of the Grantor.

THE REPRESENTATIVE:

The Grantor does not have to choose the same person to act as Representative in both the Representation Agreement For Financial Affairs and for Personal Care. The Grantor must choose carefully so as to prevent conflicts between the people chosen as Representatives. This point must be addressed in the Instruction Guide.

The Representative may be a group of people, for example, a trust company could be the Representative for Financial Affairs and a group of people chosen by the Grantor may be the Representative for Personal Care. The Grantor may choose to assign a specific authority to each individual within the group of people acting as the Representative for Personal Care. (For an example see the section on The Ulysses Contract).

The Grantor may choose the Public Trustee or the Public Guardian to act as the Representative. The Public Trustee or Public Guardian consent to be the Representative. They may not withhold this consent based on the estate's inability to pay their fees.

The Representative should not be in a position of conflict when carrying out the responsibilities. It is recognized, however, that it is difficult to ensure that there is NO conflict of interest. For example, if the Representative for Personal Care was the beneficiary under the Grantor's will, some observers may wonder for whose benefit a certain health care decision was made. If the Representative for Personal Care had a personal change of philosophy since being appointed, maybe becoming a Jehovah Witness, it may be difficult for them to continue in the role of health care representative for a Grantor who has not shared that philosophy.

In this situation, when there is a potential for conflict, the Representative must notify the Office of the Public Trustee/Office of the Public Guardian that there may be a conflict of interest between the Representative and the Grantor.

If a Representative fails to report a conflict or fails to recognize that a conflict exists, and personally benefits from a decision which is made, the Representative may be held accountable. See section on Monitoring.

The Representative must understand that the decisions to be made are important. The guidelines for decision making for Representatives must clearly outline the way in which decisions must be made.

The Representative must sign a Certificate of Representative to certify that he or she accepts the role of Representative and that he or she understands that the requirements of the position are to make decisions that are in accordance with the instructions outlined in the Representation Agreement.

DELEGATION

The Grantor of a Representation Agreement may specify within the document whether the Representative has the authority to delegate any or all of the powers outlined within the document.

A Representative may retain professionals such as lawyers, investment counsellors, accountants to assist in the management of the estate.

THE ALTERNATE REPRESENTATIVE:

People should be permitted and encouraged to choose an Alternate Representative. This would be extremely valuable in the case of a Representative who is unable or unwilling to act when the document comes into effect or if the Representative is unable to continue to act. People should be encouraged to choose an alternate, and the Representation Agreement forms shall include a line about choosing an Alternate, which could be stroked out if the Grantor definitely did not want to choose an Alternate.

The Representation Agreement terminates upon the death of the Alternate or on the unwillingness of the Alternate to continue to act.

POWERS AND DUTIES:

The authority of the Representative is very broad, and it is very important that the Representative act with the necessary degree of respect for the Grantor. For this reason, certain constraints are put on the manner in which the Representative makes decisions.

If the Grantor is not able to make decisions entirely on his or her own, the Representative must provide the support to the Grantor in order to maximize his or her abilities to make the necessary decisions. The Representative should encourage the Grantor to participate to the maximum extent in all decisions. When it has been determined that the Grantor is not capable of making a decision, the Representative shall make decisions diligently, in good faith, and in a manner which ensures the Grantor's civil and human rights.

When it has been determined that the Grantor is not capable of making the particular decisions covered in the Representation Agreement, the Representative should make decisions according to the adult's expressed wishes if known. If these are not known, the decision must be in a manner consistent with the adults values, beliefs, and wishes. If these are not known and cannot be ascertained, the Representative will act in the Grantor's best interests.

The Representative may be guided by the Grantor's expressed wishes except where to do so is impossible, or puts the Grantor at risk, or is against the Criminal Code.

If the legislation or Grantor's instructions do not make it clear to the Representative how he or she should decide a certain matter, the Representative may seek instructions from the Court. The Court may then make an order which the Court believes will not be in contravention of the Act or regulations, but which the Court believes is necessary in the best interests of the adult. The Court may order that the costs of this application come from the Grantor's estate.

LIMITS:

Certain decisions cannot be delegated to a Representative, and the legislation should reaffirm existing rules and set out additional prohibitions. Some examples are: voting; marriage; instituting divorce proceedings; wills; medical procedures which are not medically necessary for the protection of the Grantor's health; consent to the adoption of minor children; consent to psychosurgery or to a procedure the main purpose of which is for research; or any other legislated limit.

FINANCIAL AFFAIRS:

The Representative for Financial Affairs has the power to decide any and all matters relating to the financial affairs of the Grantor that the Grantor would have had the power to decide, unless specifically excluded from the power of the Representation agreement.

For investment purposes the Representative is not considered a Trustee under the Trustee Act.

The Representative for Financial Affairs has the power to deal with legal matters, and may institute legal proceedings or defend legal actions on behalf of the Grantor. The Representative has the responsibility of a prudent person in determining when to initiate legal proceedings on behalf of the Grantor. Supreme Court Rule 6 shall allow a Representative to be a Guardian ad litem.

The Representative for Financial Affairs has a duty to maintain accounts and to produce these upon demand to the Grantor, the Office of the Public Guardian/Public Trustee or to the court-appointed Decision Maker.

The Grantor should share his or her values, wishes and beliefs, with the Representative at the time of the appointment.

If the Grantor has asked that the Representative for Personal Care act as the guardian of his or her minor children, the Representation Agreement for Finances should set out a power to the Representative for Financial Affairs to spend money for the care of the minor children.

The Representative for Financial Affairs shall not have to renew the filing of the Representation Agreement for Finances at the Land Title office after it has been triggered.

PERSONAL CARE:

The Representation Agreement for Personal Care could give the Representative the authority to make decisions which involve personal care, health care (including medical and psychiatric treatment) and/or the guardianship of the Grantor's minor children.

The Grantor should share his or her values, wishes, and beliefs with the Representative at the time of the appointment.

The Representative for Personal Care may be guided by written instructions (such as a "living will" or advance medical directive).

The Representative for Personal Care has the right to receive information from the medical practitioners, consult appropriate people, ask for second opinions, and be fully informed, just as if he or she were the Grantor, in order to make a fully informed consent or refusal to medical or health treatments.

The Grantor may choose to indicate that the Representative for Personal Care may be the guardian of the Grantor's child(ren). The Grantor may limit the Representative to simply having custody of the child(ren). The Grantor may authorize the Representative for Financial Affairs to use the property and assets for the benefit of the Grantor's minor children.

The Representative for Personal Care has all the powers to make personal care decisions on behalf of the Grantor, unless specifically excluded from the power of the Representative in the Representation Agreement document.

THE TRIGGERING EVENT:

The Grantor may want the Representation Agreement to come into effect at a pre-arranged, future time. This pre-arranged event is called the triggering event, because this is the event which triggers the authority of the Representative to act.

The Grantor may choose whether the authority of the Representative is to be effective:

1. immediately or,
2. when a Standard Assessment has made a determination that the Grantor is not capable to make certain decisions, or
3. at a certain time in the future upon a pre-arranged event ("triggering event").

In all cases the Grantor will always have the ability to act simultaneously with the Representative and is able to revoke the Representation Agreement as long as the Grantor is capable of revoking it.

1. Effective Immediately

If the Representation Agreement is to come into effect immediately, the Grantor must realize that he or she retains the absolute authority to revoke the Representation Agreement in its entirety. In this situation the Grantor has actually given the Representative the authority to make decisions during the time the Grantor is still able to make decisions. The Representation Agreement document must make this very clear to the Grantor. A warning to this effect must be on the document, and the issue must be addressed in the Instruction Guide.

2. Triggering Event

The Grantor may choose his or her own triggering event. However, the triggering event must be clearly set out so that it is possible to determine when in fact the event has occurred. The Representative must have some proof or authentication to show to any third parties that the triggering event has occurred.

The Instruction Guide must give a clear explanation for people planning to use a Representation Agreement, explaining the importance of designing a triggering event which is possible to measure. Unless the Representative is able to determine when the triggering event has occurred, the Representative will not be permitted to act. This may frustrate the purpose of the effort in the first place. The Representation Agreement itself shall include a warning about this concern.

If the triggering event chosen by the Grantor is not related to the inability of the Grantor to make certain decisions, the Representative will perhaps have the authority to act during the time that the Grantor is still capable of making decisions.

3. Following a Standard Assessment

If the triggering event is the determination through the Standard Assessment confirming that the Grantor is unable to make certain decisions, the Representative must attach a Certificate of Assessment to the Representation Agreement, before the document will be accepted as being in force and effect.

The Standard Assessment may determine that the adult is capable to make some but not all decisions, and the Representative would have to know very clearly which decisions these are. The Standard Assessment would have to clearly define these areas so that any third parties (anyone who is relying on the Representative to make a decision) would know when the Representative has the authority to act.

When a Representative has received confirmation that the triggering event or standard Assessment has occurred, this confirmation must be attached to the Representation Agreement. It is the responsibility of the third party who is being asked to accept the authority of the Representative, to ensure that the Representation Agreement is effective.

REGISTRATION:

Registration of Representation Agreements is a key to making these pre-planning mechanisms really effective. A Registry would ensure that third parties have a method of determining whether the Representative does have authority to act (verification), make it easy to find the Representative at a time when a decision must be made, warn a Grantor whether there is a prior registration, and to make it possible to introduce a form of monitoring of Representation Agreements.

A Registry will be set up to lodge registrations of Representation Agreements. It should be set up in a manner similar to the Wills Registry which is located in Victoria.

The Registry will be put into an ON-LINE computer program and will provide twenty-four hour access.

There will be a small charge for the registration of Representation Agreements, which is to cover the costs of the system.

The Notice to the Registry shall be in standard form, a draft form is attached.

The information kept in the Registry will be: confirmation that a Representation Agreement is registered; the name, address and phone number of the Representative; notice as to whether there is a triggering condition attached; confirmation when the triggering conditions have occurred, and notice when a Representation Agreement has been terminated.

There must be very clear and stringent rules about who may have access to the information from this registry.

Registration of the Representation Agreement for Financial Affairs is required before the Representative will have the authority to act. The Grantor or the Representative shall be responsible for the registration of the Representation Agreement for Finances.

Registration of a Representation Agreement for Personal Care will not be invalidated if it is unregistered. The Grantor or the Representative may register the Representation Agreement for Personal Care.

When a Representation Agreement contains a triggering event it is the responsibility of the Representative to file a certificate with the Registry to indicate that the triggering event has occurred.

If the Representation Agreement for Finances is effective immediately, the third party can accept the Representation Agreement upon confirmation of registration, through an ON-Line search.

Confirmation of registration is not required for a Representative for Personal Care, but can be acted upon immediately. Once the Representative for Personal Care has been used, registration is mandatory.

If the Representation Agreement is to be effective upon the Standard Assessment, a third party must accept the Representation Agreement upon confirmation of registration of the Representation Agreement through an On-Line search, plus the production of a Certificate of Assessment attached to the Representation Agreement.
Confirmation of registration is not required for a Representation Agreement for Personal Care, but can be acted upon immediately. Once the Representation Agreement for Personal Care has been used, registration is mandatory.

If the Representation Agreement is to effective upon an event chosen by the Grantor, a third party must accept the Representation Agreement upon confirmation of the registration of the Representation Agreement through an ON-Line search, plus an affidavit of the Representative that the condition set in the Representation Agreement has been met.

LEGALITIES:

It would be advisable that lawyers and notaries public draw up Representation Agreement documents. However, some people may want to prepare their own documents. It is essential, therefore, that there be very clear, plain language instruction guides which come with the complete set of documents.

It is also recognized that people may not use the Guide, no matter how well put together it may be. Therefore it is also imperative that the most important issues are addressed right on the document.

All Representation Agreements shall use the standard form. A draft form is attached.

Release of third parties shall be the same as is currently in the Power of Attorney Act.

A Representative who acts for a Grantor, not knowing that the Representation Agreement has been revoked, but the Representative acts according to the authority that had been granted in the Representation Agreement, the Representative will not be liable and will be deemed to have had authority to act.

If a Representation Agreement has been revoked or has become invalid, and another person accepts the authority of the Representative, the Agreement will be considered valid for that instance, provided that any person, including the Representative, acted in good faith and did not know that the Representation Agreement had been terminated or was invalid.

REVOCATION:

The Grantor may revoke the Representation Agreement in the following manner:

> The standard Representation Agreement form shall indicate that the revocation will be effective 72 hours after notice of revocation has been filed with the registry.

When developing a Representation Agreement a Grantor may choose to shorten or to extend the time period before revocation takes effect.

The Grantor must notify the Registry with the appropriate amount of time, register the revocation with the Registry after the notice period, and must then deliver a notice of revocation to the Representative.

There will be a fee for registration of revocations.

Each revocation and Representation Agreement must begin with the correct wording: "I revoke all previous enduring powers of attorney and/or Representation Agreement for _____________."

An adult is capable of revoking a Representation Agreement if the adult is capable of giving the Representation Agreement. An adult must be capable of revoking in order to revoke a Representation Agreement.

TERMINATION:

A Representation Agreement terminates:

1. upon the appointment of a Substitute Decision Maker or a Guardian, or
2. after the appropriate notice period and receipt by the registry of a written revocation, or
3. upon the death of the Grantor, or
4. upon the death or bankruptcy or incapability of a Representative unless an Alternate has been appointed, or
5. upon the death, bankruptcy or incapability of the Representative and the Alternate Representative, or
6. upon the dissolution of marriage if the Grantor and the Representative were spouses, or
7. by Court Order.

MONITORING AND REVIEW:

A process must be developed to deal with situations where concern has been expressed about the way in which a Representative has carried out the responsibilities.

Financial: When concern has been identified about the conduct of a Representative in a Representation Agreement, a review should be conducted by the Office Of The Public Trustee. The review should include a review of the asset lists and accounts as well as the decisions which have been made or are in question.

Medical issues: Information about possible misuses of a Representation for Personal Care would very likely come from the medical or hospital personnel who would be engaged in the care of the incapable adult.

If allegations that a Representative is inappropriate can be founded (for example, the Representative has not had contact with the adult for many years), the court may remove the Representative from the position.

The court shall not overturn the decision of the Representative.

The Grantor may choose someone to act as a monitor, and put this into the Representation Agreement. If so, the monitor would need to certify that he or she would accept the role, and details of how the monitoring would be structured would also need to be agreed upon and written into the Representation Agreement.

INVESTIGATION:

A process must be developed for circumstances of suspected abuse of the Representation Agreement.

Intervention, if seen as necessary, must be undertaken with respect and understanding for the family (if the Representative is a family member) and the circumstances of the relationship between the Representative and the Grantor. The right of the adult and family to their privacy cannot be unnecessarily or insensitively eroded.

The Public Trustee shall have investigative powers concerning the accounting and management of the Grantor's affairs and may obtain a Court Order that the Representation Agreement be revoked and that the Public Trustee or other named individual or trust company be appointed in the Representative's place.

OTHER JURISDICTIONS:

If a document similar to a Representation Agreement has been executed in another jurisdiction but would be valid in the jurisdiction in which it was executed, it shall be considered to be valid in British Columbia.

RELATIONSHIP WITH COURT-ORDERED DECISION MAKING SYSTEM:

In the event of the failure of a Representation Agreement, there shall not be a court ordered appointment of another Representative. The failure of the Representation Agreement shall be treated similarly to a situation where no Representation Agreement exists.

ADVANCE MEDICAL DIRECTIVES OR LIVING WILLS

Living wills or advance medical directives are not the best way to ensure that one's medical concerns, wishes and desires are respected at a point when one is not capable of making medical decisions.

Living wills are of limited use because it is difficult to predict every possible future contingency in the document. What seems important treatment to avoid now, may be substantially changed in the future, and may not be distasteful to the adult. However, the physicians would have to abide by the directive. Maximum flexibility would be achieved by appointing a trusted person to make medical decisions.

Living wills may be useful as a guide for a Representative for Personal Care as evidence of what kind of decisions the Grantor would have wanted.

Therefore, the recommendation is that living wills should not be legislated, and instead, Representatives for Personal Care should be given the authority to make these decisions.

MANDATED INFORMATION DISSEMINATION:

Any institution, organization or facility such as a hospital, long term care facility, mental health facility, boarding home, home care agency, hospice program shall:

1. maintain written policies and procedures about future planning with respect to all adults receiving care:

2. provide to each adult on admission and on discharge written information concerning the adult's rights to document their future wishes in a Representation Agreement,

3. document in the adult's record whether or not the adult has made any Representation Agreement

4. comply with the law respecting Representation Agreements

5. provide for education of staff and any others involved with the care of the adult on issues concerning Representation Agreement.

PUBLIC EDUCATION CAMPAIGN:

The Government of B.C. should fund the development of information materials that can be given to the institutions, hospitals or organizations for distribution to all adults in their care and for a campaign to inform and encourage the public to plan for the future using a Representation Agreement document.

If people have the ability to plan for their future health and financial needs, there should be a decreased need for the costly court process.

Professionals (such as doctors, lawyers, social workers, etc.) must be made aware of the importance of future planning for financial and personal needs and be able to advise their clients and support public awareness of these issues.

Lawyers and notaries public should be required to advise their clients about Representation Agreements at the time the client is giving instructions about a will.

Organizations such as the People's Law School could play a large role in ensuring that information about methods for future planning are disseminated in the community.

There must be a resource centre which is able to provide education, advocacy, information, and support on Representation Agreements to adults, with the capability of addressing the concerns of cultural, ethnic, and varying disability needs.

It should be made clear to all adults who execute a Representation Agreement, that the document should be kept up to date and revised when changes are necessary.

Retirement planning seminars are increasingly available, and the curriculum should include the important information about Representation Agreements.

These discussions should stress the importance of future planning to prevent crisis management which often occurs when no future planning has occurred.

INSTRUCTION GUIDE:

An Instruction Guide shall be developed for use with the Representation Agreements and this Instruction Guide shall be written in clear and plain language.

The standard forms for use with the Adult Self Determination Act must have numbered paragraphs which refer to numbered explanations in the Instruction Guide.

The Instruction Guide must also explain the manner in which the Representative should make decisions.

The Instruction Guide must recommend that a Grantor of a Representation Agreement should review the details of the Representation Agreement with the Representative at the time of the appointment. It is hoped that this would prevent misunderstandings at a later date.

The Instruction Guide must set out information for the Representative, with the phone numbers for further information to the Office of the Public Trustee and the Office of the Public Guardian.

The Office of the Public Trustee and the Office of the Public Guardian must provide materials for prospective Representatives so that they are better able to make decisions for the Grantor.

The Instruction Guide must carefully explain to the Grantor that while the Grantor has the right to determine his or her own triggering mechanism, the mechanism must be carefully chosen. Examples should be given to illustrate the importance of choosing an appropriate triggering event.

The Guide should provide information to the Grantor about how to choose a Representative. For example, the Guide might say that there is no prohibition against choosing a person serving time in a correctional institute, but that such a person would not physically be able to carry out some of the duties of a Representative.

ASSISTANCE, SUPPORT AND ADVOCACY:

The adult might need assistance, support and advocacy in developing Representation Agreements:

1. The adult needs to be aware of this concept.

2. The adult needs the information to be written (in the appropriate language or mode, eg. braille), told and explained verbally, and to have someone who will remind them

about it, if necessary.

3. The adult needs to be know that they may revoke a Representation Agreement, and they need to know how to do this.

4. The adult needs a skilled, knowledgable person, ie. lawyer or notary, for legal advice.

REPRESENTATION AGREEMENT FOR FINANCIAL AFFAIRS

1.THIS REPRESENTATION AGREEMENT FOR FINANCIAL AFFAIRS is granted by me ________________ (Grantor), presently residing at __________ ____.

2.Revocation of Prior Representation Agreements

I HEREBY REVOKE each and every Power of Attorney and each and every Representation Agreement for Financial Affairs granted by me prior to this Representation Agreement for Financial Affairs, except ________________________________ __________________________.

3.Appointment of Representative

I APPOINT __________________________ (Representative), presently residing at ____, to be my Representative in accordance with the Adult Self Determination Act.

4.Appointment of Alternate Representative

If the person appointed as my Representative should at any time be unable or unwilling to act or to continue to act as my Representative then I choose _____________________________, presently residing at ____, to be my Representative in place of my first named Representative.

5.Appointment of monitor

I APPOINT ____________________________ (monitor), presently residing at ____, to monitor my Representative for Financial Affairs. They will monitor my Representative in the following manner: ______________ ______________________________.

6.Delegation by Representative - Choose one:

My Representative may not delegate his/her power and authority granted by this document to any other person or persons;
 (or)
My Representative may delegate his/her power and authority granted by this document to any other person or persons that my Representative chooses provided such delegation of power and authority is in writing and registered according to the Adult Self Determination Act.

7.Subsequent Incapability

This Representation Agreement for Financial Affairs may be exercised at the time that I become incapable of managing certain or all of my financial affairs.

8.**Effective Date - Choose one:**

This Representation Agreement of Financial Affairs shall be effective immediately; (Appropriate warning)
(or)
This Representation Agreement of Financial Affairs shall be effective upon me becoming incapable of managing my financial affairs as determined by a Certificate of Result from an assessment;
(or)
This Representation Agreement for Financial Affairs shall be effective upon _______________________________. (specify the event or time in detail). (Appropriate warning)

9.**Minor Children**

I authorize my Representative for Financial Affairs to use my estate for the care and guardianship of my children.

10.**Registration**

This Representation Agreement for Financial Affairs must be registered in accordance with the Adult Self Determination Act before it can be acted upon.

11.**Revocation:**

I understand that revocation of this Representation Agreement may occur 72 hours after I file notice of revocation with the Office of the Public Trustee and deliver a notice of revocation to my Representative, except as now set out:
______________________________.

12.**Termination**

This Representation Agreement of Financial Affairs terminates in accordance with the Adult Self Determination Act, upon the appointment of a permanent Substitute Decision Maker for financial affairs, or upon the registration of my written revocation of the Representation Agreement for Financial Affairs, or upon my death.

In addition, this Representation Agreement for Financial Affairs terminates (these may be deleted if inappropriate):

> upon my Representative being declared bankrupt or
> upon dissolution of the marriage between my Representative and me.

13. Duties

My Representative has a duty to administer my estate in my best interests alone, and in accordance with this Representation Agreement, must keep full accounts and pass these accounts with respect to this Representation Agreement when called upon to do so by the Grantor, Court Appointed Decision Maker, Public Trustee, or Court order.

14. Remuneration

My Representative has no right to remuneration for services as my Representative, except as now set ______________________________ out: ____.

15. Restrictions

This Representation Agreement for Financial Affairs does not empower my Representative to vote on my behalf, consent to marriage, institute divorce proceedings, consent to the adoption of children or consent to medical treatment.

In addition, this Representation Agreement for Financial Affairs is subject to the following conditions and restrictions: ____
____.
(specify any restrictions or powers for investments, spending, gift giving etc.)

I have carefully read this document, my Representation Agreement, and understand the contents of it, and I sign my name as my own free act.

WITNESSED BY:

______________________________ Signature	______________________________ Grantor (Note: The witness must complete the Certificate of Witness. The Representative may not witness this document. The Representative must execute the Certificate of Representative).
______________________________ Print Name	
______________________________	
______________________________ Address	

CERTIFICATE OF REPRESENTATIVE

I, ______________, of ____________________, in British Columbia certify:

1. I am the Representative named in the Representation Agreement for Financial Affairs dated the ___ day of ___________, 19___, executed by ____________________ (the "Grantor"), attached as Exhibit "A" to this my Certificate.

2. I understand that the role of a Representative granted by this Representation Agreement for Financial Affairs is to administer the Grantor's estate as set out in the Representation Agreement for Financial Affairs, and that I have no right to remuneration for my services as Representative except as set out in the Representation Agreement for Financial Affairs.

3. I understand that I must notify the Grantor at the time I have the authority to act as Representative.

4. I understand that I have a duty to administer the Grantor's assets in the Grantor's best interests alone as set out in the Representation Agreement for Financial Affairs and in the Adult Self Determination Act, and that I must keep accounts and must pass my accounts with respect to the Representation Agreement for Financial Affairs when called upon to do so by the Grantor, the Court Appointed Decision Maker, the Public Trustee or a Court Order.

5. I understand that this Representation Agreement for Financial Affairs terminates upon the court appointment of a Decision Maker, or upon the registration of a written revocation of the Representation Agreement for Financial Affairs by the Grantor, or upon the death of the Grantor; or upon my being declared bankrupt or upon the dissolution of the marriage of the Grantor and myself (where appropriate).

6. I understand that I must notify the Public Trustee in writing of any transaction where there could be a conflict of interest between myself and the Grantor.

6. I understand that the Representation Agreement for Financial Affairs must be registered in accordance with the Adult Self Determination Act before it can be acted upon.

7. I will comply with the above provisions, and I understand that failure to act in accordance with the Representation Agreement for Financial Affairs can subject me to civil and criminal penalties.

The truth of this statement is Certified at the City of

_______________, Province of British Columbia, this ____ day

of_____________, 19___.

____

Signature of Representative

____

Print Name

____

____

Address

CERTIFICATE OF WITNESS

TO REPRESENTATION AGREEMENT OF FINANCIAL AFFAIRS

I,________________________________,of________________________
____,in British Columbia certify that on the ___ day of
_______________, 19___, at __________________________, British
Columbia, ______________________________(name of grantor)
whose identity has been proved by the evidence of the oath
of: ____
_______________(State full name, address and occupation)
(or) who is personally known to me, appeared before me and
acknowledged to me that:

1. He/she is the person mentioned in this Representation Agreement for Financial Affairs as the Grantor.
2. His/her name is subscribed to this Representation Agreement for Financial Affairs.
3. He/she has carefully read the contents of this Representation Agreement for Financial Affairs and confirmed to me that he/she understood the Representation Agreement.
4. He/she is of the age of 19 years of more.

The truth of this statement is Certified at the City of

________________________, Province of British Columbia, this

____ day of_____________, 19___.

____
Signature of Representative

____
Print Name

____

____
Address

REPRESENTATION AGREEMENT FOR PERSONAL CARE

1.THIS REPRESENTATION AGREEMENT FOR PERSONAL CARE is given on __________, 19___, by me ____________ (Grantor) presently residing at ____.

2.Revocation of Prior Grants

I HEREBY REVOKE each and every Representation Agreement For Personal Care given by me prior to this grant of Representation Agreement For Personal Care, except ____________________________ ____.

3.Appointment of Representative

I APPOINT _______________________ (Representative), presently residing at ____, to be my Representative in accordance with the Adult Self Determination Act.

4.Appointment of Alternate Representative

If the person appointed as my Representative should at any time be unable or unwilling to act or to continue to act as my Representative, then I designate ______________________________, presently residing at ____, to be my Representative in place of my first named Representative.

5.Appointment of Monitor:

I APPOINT ____________________________ (monitor), presently residing at ____, to monitor my Representative for Financial Affairs. They will monitor my Representative in the following manner: ____.

6.Delegation by Representative - Choose one:

My Representative may not delegate his/her power and authority granted by this document to any other person or persons;

(or)

My Representative may delegate his/her power and authority granted by this document to any other person or persons that my Representative so chooses.

7.In The Event That I Become Incapable of Making Personal Care Decisions

This Representation Agreement for Personal Care may be exercised when I become incapable of making personal care decisions.

8.Effective Date - Choose one:

This Representation Agreement of Personal Care shall be effective immediately;
(or)
This Representation Agreement for Personal Care shall be effective upon me becoming incapable of making personal care decisions as determined by a Certificate of Result from an assessment;
(or)
This Representation Agreement for Personal Care shall be effective upon ____________________________________. (specify the event or time with detail)

9.Minor Children

My representative for Personal Care shall be the guardian of my minor children, namely ____________________________

____

____________________________.

10.Registration

This Representation Agreement for Personal Care must be registered in accordance with the Adult Self Determination Act, and if it must be acted upon prior to registration, it must be registered within forty-eight hours of it being acted upon.

11.Revocation:

I understand that revocation of this Representation Agreement may occur 72 hours after I file notice of revocation with the Office of the Public Trustee and deliver a notice of revocation to my Representative, except as now set out: ____________________________
____.

12.Termination:

This Representation Agreement for Personal Care terminates upon the appointment of a Substitute Decision Maker, or upon the registration of the written revocation by me, of the Representation Agreement for Personal Care, or upon my death;

In addition, this Representation Agreement for Personal Care terminates upon dissolution of the marriage of my Representative and myself. (these may be deleted if inappropriate)

13. Powers:

My Representative shall have the power to decide the following if my Representative determines that it is not contrary to my present wishes: (Delete any that are inappropriate) consent to medical treatment on my behalf; refuse medical treatment on my behalf;
determine where I shall reside; determine who may visit me.

14. Remuneration:

My Representative has no right to remuneration for his/her services as my Representative except as now set out: ____________

____.

15. Restrictions:

This Representation Agreement for Personal Care does not empower my Representative to vote on my behalf, consent to marriage, institute divorce proceedings, consent to the adoption of children or handle any of my affairs that would be covered by a Representation Agreement for Financial Affairs.

In addition, this Representation Agreement for Personal Care is subject to the following conditions and restrictions: ____________

____.
(specify any restrictions)

I have carefully read the foregoing and understand the contents of this Representation Agreement and I sign my name as my own free act.

WITNESSED BY:

____
Signature

____
Print Name

____

____
Address

____
Grantor
(Note: The witness must complete
the Certificate of Witness. The Representative and others listed in Section on Witness may not witness this document.)

REGISTERED SUPPORT NETWORKS

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A FRAMEWORK DOCUMENT

REGISTERED SUPPORT NETWORKS

SUPPORT NETWORKS:

Support networks should play a role in enabling adults to make decisions. It is important to give responsibility and opportunity to the adult to make their own choices and to the family and the support network to help them make their own decisions.

In many cases adults are living reasonable lives with the assistance of the "natural support network" which has developed over the years and this network needs recognition at the age of majority.

A support network consists of people chosen by the adult, or people with whom the adult demonstrates or has in the recent past demonstrated a reciprocal bond. These are also known as "circles of support", "circles of friends", and "Joshua Committees". They are primarily for people with a mental or physical handicap, sometimes for people with a mental illness, but could be extended to others.

An adult and their support network may be a Registered Support Network.

Proposed Steps:

1. The network forms around the "focus" adult, selects its facilitator, and adopts the recommended constitution and 'by-laws'; or,

   The network might be established by a social services agency responding to, for example, a self-neglect situation; or

   The network is established by a social services agency following an assessment, en route to a court application; or

   The network is established by a social services agency following a court hearing where a judge orders or recommends that a circle be created as the least restrictive, etc., option.

   The network should as much as possible, be voluntarily formed and selected by the adult, it shall consist of people chosen by the adult, or people with whom the adult demonstrates or has in the recent past demonstrated a reciprocal bond.

2. The network registers with the Public Guardian. The authority for this shall be in the proposed Public Guardian Act.

The purposes of registration are:

(a) to acquire status and recognition: to be recognized by, and recognizable to, others.

(b) to inform and assist so that the group conforms to the prescribed principles and standards (guidelines, duties, and limits). They might have a constitution setting out, for example, the number of people in the Registered Support Network, quorum for decision making, any disqualifying conditions. They might also have a dispute resolution process. These will be developed by the organizations currently promoting networks and circles and/or existing networks/circles.

(c) to safeguard the adult, especially from abuse or neglect, and from the tyranny of the circle (that is, ensure that the adult wants it to happen or, at least, does not communicate objection). Prevents the adult, and the circle, from being forgotten; prevents abuse or neglect (the circle is recognizable and someone knows what is happening).

(d) to communicate in the adult's way to the adult, and to express the adult's wishes to others.

(e) to facilitate joint (associate) activities; notably, banking, tenancy agreements, and the like.

(f) to facilitate communication and mutual support between networks.

3. On registering the network becomes recognized and recognizable as the focus adult's associate, not substitute, decision makers and this may be all that is required (for example, the group may bank jointly, sign contracts jointly, and so on, where necessary (that is, if this is the only way to secure the needed service.)

4. Two areas may require special (separate) attention because of professional liability:

   Legal representation - instructing a lawyer. We suggest the Supreme Court Rules be changed to allow a Registered Support Network to instruct as guardian ad litem.

   Consent to Health Care. We are reconstructing this legislation anyway. Include the Registered Support Network in the list of temporary substitute decision-makers to be used in the event a health care professional has doubts re informed consent and declines to treat without a substitute consent (for example the list of Temporary Substitute Decision Makers begins as follows: Court-ordered Decision Maker, Representative for Personal Care, quorum of an adult's Registered Support Network...)

We have recommended that there be an objection/appeal/ override procedure in choosing a Temporary Substitute Decision Maker in consent to health care legislation. So if there are cases of dispute, as with any other adult, the choice of decision maker can be overturned.

5. **An additional dispute resolution/mediation process will be required to handle problems other than consent to health care appeals/objections**

6. **Intervention by the Public Guardian to prevent abuse or neglect if there is a hitch/problem, the focus adult complains and wants to escape the circle, or the network collapses and requires rebuilding/replacement.**

7. **Abuse and neglect procedure and the court process (that is, assessment and appointment of a substitute decision-maker) as a safety net (last resort) ...actually, more a trampoline because we want to catch the falling body and then flip the person back into a new support network, as quickly as possible.**

THE POWERS AND DUTIES OF A REGISTERED SUPPORT NETWORK

The Registered Support Network shall act:

- a) diligently
- b) in good faith
- c) in a manner which:
    - i) ensures that the adult's civil and human rights are protected;
    - ii) encourages the adult to participate to the maximum extent in all decisions affecting the adult; and
    - iii) ensures that the adult acts independently in all matters in which the adult is capable; and
    - (iv) limits the Registered Support Network's interference in the life of the adult to the greatest extent possible.

LIMITS:

Substitute decision making can only be made in the above two instances. The concept of Registered Support Networks is to enable supported not substitute decision making.

ASSISTANCE, SUPPORT AND ADVOCACY

~

A FRAMEWORK DOCUMENT

ASSISTANCE, SUPPORT AND ADVOCACY

DEFINITIONS:

Advocate: An advocate is someone with enough special knowledge to inform, assist and support an adult to act for themselves and if necessary, to express the adult's wishes. An advocate is a person who is acting in an advocacy capacity. An advocate may be, for example, a family member acting in an advocacy capacity or may be a lawyer. The spectrum of advocacy includes self-advocacy, volunteer advocacy, social advocacy, and paid advocacy. The person needs recognition or status when they are acting in an advocacy capacity.

Advocacy: Adults need on-going assistance and support in the form of relationships, active support, information and education, interpretation, and linkage/facilitation and at times they need advocacy. Advocacy is goal directed and change oriented and required at certain times. Advocacy roles may include facilitation, mediation, conciliation, and informing. The main role of advocacy is to protect the rights, freedoms, and dignity of a adult. Advocacy enforces the accountability of the adult Guardianship system.

Order of importance of Personal Support:

1. Adult, self-advocacy.
2. Support network, family members, friends.
3. Lawyer, doctor, welfare advocates, etc.
4. Advocacy office.

The order of #3 and #4 in the chart above might be reversed, for example, the adult or the support network might go to #4 (Advocacy Office) for a referral to #3 (service provider).

If any of these components have conflict there shall be formal facilitation and mediation.

FUNDAMENTAL PRINCIPLES:

Assistance, support and advocacy are critical to the Guardianship process.

Services must be in place that:

a) support and validate existing support networks.

b) facilitate the development of natural advocacy and support networks for adults who do not have support and are vulnerable to the court appointment of a Decision Maker.

c) provide standards, training, information, support and networking for people and organizations assisting adults who are vulnerable to having their rights taken through a substitute decision-making procedure.

It should be the role of the Offices of the Public Trustee and Public Guardian to provide short-term services. They should be a "trampoline" rather than a 'safety-net'. That is, it should be their role, to provide short term services and find natural support for the adult in the community.

The appropriate financial resources for assistance, support and advocacy must be in place. Existing advocacy services must be funded on a continuous basis if they have been evaluated to be valuable to the adults they serve.

The Civil Legal Aid Tariff should fund lawyers to represent adults who have been abused or neglected (and are not capable of understanding that abuse or neglect) as well as the abusers (under the Criminal Legal Aid Tariff).

Ministries should re-allocate their funding to fund community groups to develop support networks around adults based on social relationship theory and community development models. Funding should be available to go directly to adults to purchase their own services rather than directly to the service providers.

Ministries should provide transition funds to train existing community groups to develop support networks for clients of the Public Trustee or Public Guardian. Existing groups should be encouraged to develop more natural support for their clients rather than service. New groups should be established with this role.

Ministries should provide funds for demonstration projects of sufficient size for developing support networks. Groups currently developing support networks for their clients should be encouraged to help others.

Adults should have the opportunity to become self-advocates, through training, support, education, and encouragement.

Advocacy provided by the adult's support network is the optimal model for the delivery of advocacy services.

Advocacy services must be available for adults who have no family, friends, or support network. The first task of an advocacy program would be to support the development of a support network for adults who do not have one in place.

Systemic and social change for the benefit of adults can be provided through the advocacy of non-profit groups

People acting in an advocacy capacity should have status or recognition.

Self-advocates should be involved throughout this process.

WHAT IS AN ADVOCATE?

An advocate is someone with enough special knowledge to inform, assist and support an adult to act for themselves and if necessary, to express the adult's wishes. An advocate is a person who is acting in an advocacy capacity. An advocate may be, for example, a family member acting in an advocacy capacity or may be a lawyer. The spectrum of advocacy includes self-advocacy, volunteer advocacy, social advocacy, and paid advocacy. The person needs recognition or status when they are acting in an advocacy capacity.

A person acting in an advocacy capacity stands alongside the adult, ensuring that the adult Guardian system focuses upon the adult, rather than the disability.

A person acting in an advocacy capacity empowers the adult, and helps the adult to retain or build, self esteem.

A person acting in an advocacy capacity ensures that the adult understands his or her rights, assists and supports and, if necessary, represents the position of the adult during the formalities of the adult Guardianship process. The advocate has a very different role from that of a Representative or court appointed Decision Maker.

If a person acting in an advocacy capacity is a part of the service delivery system they should be impartial.

A person acting in an advocacy capacity has knowledge or would obtain information about community programs, services and opportunities which may be useful or helpful for the adult. They would ensure that the adult is aware of services, programs, and opportunities which exist, and ensures that the adult is able to choose and then access, these services, programs and opportunities.

A person acting in an advocacy capacity acts on the instructions of the adult, carries out the expressed wishes, and ensures that these instructions are carried out to the adult's satisfaction. Any position taken by the advocate is one which the adult has directed. The advocate shall assist the adult to make decisions in the following order:

1. The adult can make his or her own decisions and shall be enabled to do so.

2. If the adult needs help making decisions, this help should be given through supported decision making.

3. If the advocate has to represent the adult it shall be done in the following way:

    a) according to the adult's expressed wishes

    b) in a manner consistent with the adults values, beliefs, and wishes

    c) if a) and b) are not known and cannot be ascertained then the advocate shall act in the adult's best interests.

ASSISTANCE AND SUPPORT:

Advocacy provided by the adult's support network is the optimal model for the delivery of advocacy services.

A person acting in an advocacy capacity supports and ensures that the adult has a support network which has a reciprocal trusting relationship between the adult and the people in the support network and that the network is able to advocate effectively for the adult.

A person acting in an advocacy capacity ensures that the adult does not slip into the adult Guardianship process simply because there is no support for the adult in the adult's environment or community.

A person acting in an advocacy capacity steps in when the adult has no support network or when it has broken down or is no longer available to the adult for any reason, and helps to create or develop a support network for the adult.

WHAT ARE THE QUALITIES OF AN ADVOCATE?

A person acting in an advocacy capacity must understand the values of the adult and his or her support network

A person acting in an advocacy capacity must be able to spend the time necessary to understand the adult, to communicate effectively with the adult, in order to ensure that the wishes of the adult are understood and are capable of being carried out

A person acting in an advocacy capacity needs to have training in order to effectively carry out the responsibilities of the position

A person acting in an advocacy capacity needs to have special personal qualities:

- they must be an enabler
- they must have understand the principles of advocacy
- they must be able to empower the adult
- they may act as a mentor to the adult
- they must act on instructions from adult
- they must act with vigour
- they must understand the adult's values, including ethnic and religious beliefs
- they must be able to provide support and respect the wishes of the adult, without allowing their own personal values, beliefs and interests to interfere

THE ROLE OF THE ADVOCACY OFFICE

The Role of the Advocacy Office is:

1. To support and validate existing support networks for adults vulnerable to court appointment of a Decision Maker

2. To facilitate the development of natural advocacy and support networks for adults vulnerable to court appointment of a Decision Maker who do not have support.

3. To provide standards, training, information, support and networking for people and organizations assisting adults vulnerable to court appointment of a Decision Maker.

The Office would provide support, assistance, education, training, information and validation of existing support networks, including information on their limits.

The Office would facilitate the development of a support network for adults vulnerable to court appointment of a Decision Maker who do not have support. For example, a support network might enable an adult to stay in their own home rather than move into a facility.

The Office would model and impart our principles, attitudes and philosophies to the public.

The Office would be a resource to relevant advocacy services and organizations and provide information about those advocacy services to the public. The Office might identify the needs for advocacy services.

The Office would establish standards, training and support for support networks, staff and advocates.

The Office would ensure that adults vulnerable to court appointment of a Decision Maker would have advocacy.

The Office would ensure that there is a dispute resolution process.

The Office must be separate from other public bodies which provide services within an adult Guardianship system (such as the roles now played by the Office Of The Public Trustee, Ministry of Health and Ministry of Social Services and Housing)

ABUSE, NEGLECT AND SELF NEGLECT

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A FRAMEWORK DOCUMENT

ABUSE, NEGLECT AND SELF-NEGLECT

INTRODUCTION:

We recommend that there be legislation and a coordinated response to adults who are not capable of making decisions about the abuse, neglect or self-neglect they are experiencing. This response must be properly resourced and implemented immediately on a province-wide basis.

The purpose of the legislation and response is to ensure safety through provision of support, assistance, services and interventions. The legislation must provide for interventions which are the least restrictive and due process protections must be provided at each step.

GUIDING PRINCIPLES:

The legislation must set out guiding principles, and every procedure in the legislation must be read in conjunction with these guiding principles.

1) An adult is entitled to live in a manner he or she wishes, and may accept or refuse assistance, as long as it can be determined that it is the adult's conscious and informed choice, and does not cause harm to others.

2) It is our responsibility as a society to provide for each other. The opportunity to enjoy security and the necessities of life must be available to everyone, regardless of individual abilities and conditions.

3) There is no justification for abuse. Where the Criminal Code is applicable, the appropriate action shall be taken.

4) We shall be guided by respect, compassion and understanding for all individuals. Any action taken under this Act must be provided in a timely manner and must be designed to preserve and maintain the dignity of the adult.

5) Any adult who is unable to look after him/herself, deserves the necessary care and attention that is most effective and yet least intrusive or restrictive in nature.

6) An adult has a right to self-determination and the right to have his or her person, estate and civil rights protected, even though the adult may not be capable of expressing his or her wishes.

7) The paramount consideration in any intervention contemplated by the Act, is first, the adult's expressed wishes. If these are not known, the intervention must be consistent with the adult's values and beliefs. If these are not known, any intervention must be in the adult's best interests.

8) Any intervention taken under this Act must be designed for the specific needs of the adult. The intervention must be limited in scope, and subject to review and revision as the adult's situation changes.

LEGISLATION

The legislation must provide:

1. a mechanism for reporting and for the response to reports of abuse, neglect and self-neglect,
2. a process for investigation of abuse, neglect or self-neglect,
3. authority to assess an adult's capability to make relevant decisions and standards for those assessments,
4. services that may include support, assistance and advocacy,
5. a Court process to order appropriate interventions, follow-up, review, monitoring, evaluation of the interventions,
6. due process procedures reflecting the values, rights and freedoms enshrined in the Charter of Rights and Freedoms.
7. a procedure for emergencies

There is a delicate balance between protection of an adult and preserving the adult's right to autonomy and self-determination and this must be recognized as part of this legislation.

DEFINITIONS:

ADULT:

"Adult" means a person who:

1. has attained the age of majority, and who
2. requires intervention authorized by this Act in order to preserve and/or enhance their own essential security and well-being, and who
3. has a disability severe enough to impair them from remedying the abuse, neglect or self-neglect, or is not capable of remedying the abuse, neglect or self-neglect on their own.

CARE PROVIDING FACILITY:

"Care Providing Facility" means any institution, facility, care home, boarding home, group home, or any other place of any size, which receives money for the provision of care to an adult.

ABUSE:

"Abuse" means the mistreatment, whether physical, sexual, mental, emotional, material, the withholding of or the improper use of medication, the violation of rights, or any combination of these, which causes or may cause an adult physical or psychological harm, loss of the adult's rights, or loss to the adult's estate. More specifically, abuse can be categorized in the following manner:

FINANCIAL or MATERIAL ABUSE, or FINANCIAL EXPLOITATION

The misuse of the funds and/or assets of an adult: such as, obtaining property and funds without the knowledge and full consent of the adult; fraud; theft; abuse of a Representation Agreement; pressure to change a will or to sell property and hand over the proceeds.

PSYCHOLOGICAL or EMOTIONAL ABUSE

A continual or repeated act, including confinement, isolation, verbal assault, humiliation, derogatory remarks, belittling, threats, intimidation, infantilization, or any other treatment which diminishes an adult's dignity, self-worth and ability to remedy the situation.

PHYSICAL ABUSE:

A continual or repeated act of violence or rough treatment which causes injury or physical discomfort to an adult (such as slapping, pushing, shoving, or the use of restraints). It is not necessary that there be any intention to cause injury or discomfort.

SEXUAL ABUSE:

Sexual assault or any sexual behaviour directed toward an adult who is unable to understand the implications of the action, to act to protect the security of their person, or to express their wishes.

MEDICATION ABUSE:

Inappropriate prescribing or misuse of medications, withholding medication or overmedicating an adult who is incapable of either consenting or refusing to consent to such treatment.

VIOLATION OF RIGHTS:

Denial of the rights of an adult who is unable to assert those rights, (such as withholding reasonable personal care, withholding information, denial of privacy or visitors, restricting liberty or censoring of communications).

NEGLECT:

"Neglect" means a failure to provide necessary care, assistance, guidance or attention to an adult which results in physical or psychological harm or loss to the adult or the adult's estate. Neglect may be caused by an action or lack of action and may be intentional or due to ignorance.

SELF NEGLECT:

The "adult" under this section is an adult as defined in the definitions above, but who is in addition not capable of understanding the consequences of their actions or decisions about this self-neglect.

"Self-neglect" means a failure, an action or inaction on the part of an adult, the probable result of which puts the adult or any other person in a demonstrably dangerous situation.

The adult is self-neglecting if he or she is in a demonstrably dangerous situation or a demonstrably dangerous situation is likely to exist within a short period of time.

This demonstrably dangerous situation is one which is:

a) grossly unsanitary, or
b) in which the adult is suffering from untreated illness, disease, or injury, or
c) is the adult suffering from malnutrition

such that the situation will likely result in death or severe permanent impairment of the adult's health, or

in a situation where the adult resides alone in premises under conditions where there is a high probability that the adult will electrocute or gas him or herself or start a fire.

A capable adult has the right to self neglect. This definition reflects that right.

REPORTING:

There shall be a reporting process for voluntary and mandatory reporting of abuse, neglect and self-neglect. The reporting process shall be accessible, made known to the public, and simple.

Reports shall be made to the Office of the Public Trustee/Office of the Public Guardian. Reports may be made by phone, letter, walk-in or by the police.

Reporting of abuse, neglect or self-neglect occurring in the home and community shall be voluntary. Reporting of abuse, neglect or self-neglect occurring in a care providing facility shall be mandatory.

All reports of abuse, neglect or self-neglect shall be investigated within a minimal amount of time.

There shall be legal protection for a reporter who honestly believes that the report was justified. Reporting shall be kept confidential to anyone outside the reporting agency. If the Public Trustee/Public Guardian is going to act solely on the information given in the report or if the report might be used in a Court process the report shall not be anonymous, but will be kept confidential.

Employees, volunteers, private contractors or any other people who provide services to residents of a care providing facility shall have a duty to report incidents of abuse, neglect, or self-neglect which occur in that care providing facility to adults as defined in this Act.

There shall be protection for the staff of an institution who report an incident of suspected abuse.

A person has the right to have privacy and the right not to be subject to mischievous accusations from a reporter.

An adult who has been the subject of a report of abuse or neglect shall have an advocate who will support and assist him or her through the investigation and the resolution.

These reports shall be coordinated with the police's 911 number. That is, 911 will refer appropriate calls to the Public Trustee/Public Guardian and the Public Trustee/Public Guardian will refer appropriate calls to the police.

The person receiving this report shall attempt to categorize the report. This information is critical. It may be used in the court application, later if necessary, to access the adult. The person receiving the report will consult with other people or other sources of information. They will consider:

1. Is this an emergency? Do the police need to be involved? What is the degree of risk to the adult or to the adult's estate?

2. Is there evidence of abuse? What is that evidence? For example, how often does this happen? How is it triggered? Is this the first time? Is there one abuser or several? What type of abuse is occurring?

3. Is this person capable of understanding the abuse, neglect or self-neglect? (a very preliminary assessment)

4. What are the other details of personal information, such as the name of the family physician, information on the reporter, information on the adult.

If the adult is capable information will be provided about available services.

If it is an emergency situation the police, fire or ambulance shall be called. If the activity is criminal the police will be contacted. In addition to emergencies, the police will attend if it is a health matter or to keep the peace.

INVESTIGATION:

Every report shall be investigated.

An investigation undertaken under this Act shall be comprehensive but must be as unintrusive as possible. All investigations must involve the adult as much as the adult is able to participate.

If the adult permits access to the investigators in order to substantiate the report, the following questions must be answered.

1. Is this an emergency situation? If so, what are the appropriate services - police, ambulance, fire? What is the degree of risk to the adult or to the adult's estate?

2. Is there evidence to substantiate the report of abuse, neglect or self-neglect? If the activity is criminal the police will be contacted if not already involved).

3. A preliminary determination is made to assess whether the adult is capable of making decisions about the abuse, neglect or self neglect.

4. If the adult is capable information about available services will be provided.

5. If there is a need for further intervention a Care Plan will be developed.

The investigation may look at the adult's health, social, residential, economic, vocational, educational and other conditions relating to the adult's ability to manage in his or her circumstances, make reasonable judgments and to make arrangements for his or her security and needs.

When access to an adult has been denied for the purposes of investigation (the adult is being restrained, is protesting or is not capable) the Office of the Public Trustee/Public Guardian may apply for a Court order to permit access if it is suspected or has been determined that the adult is subject to abuse, neglect or self-neglect. It is important that the Court be able to order access to Federal lands and native reserves.

Existing community organizations throughout the province shall work out a linkage agreement with the Office of the Public Guardian to carry out the work outlined in this legislation.

Investigations will be done only by people who have been accredited by the Office of the Public Trustee/Public Guardian and who will have the legal authority of that office. Guidelines for investigation shall be set by that Office.

Investigations may be done in cooperation with the police. We recommend a Car '86 or Car '87 concept in which trained staff members travel with a police officer in a police car to investigate reports of abuse, neglect or self-neglect.

INTERVENTIONS:

When it has been determined that an intervention is necessary, it must be the least restrictive and intrusive intervention which will remedy the situation. Interventions may be on an emergency, urgent, or action required basis.

It is critical that the investigation process protect the dignity and privacy of the adult.

Intervention, when abuse or neglect has been proven, must be achieved with sensitivity and caution.

The process shall strive to keep the adult in their own community and home to the extent possible, and provide support, assistance and advocacy to the adult in the adult's own environment. This is done by seeking the adult's input, involving the adult in the assessment and development of a Care Plan, determining the adult's wishes or any previously expressed wishes, and providing notice of each and every step taken in the process.

Criteria for Intervention:

After a concern has been noted, an investigation should determine whether there is in fact a justifiable concern. If the concern is substantiated then, and only then, would there have to be a assessment as to whether the adult is capable about making decisions about the abuse, neglect or self neglect. If the adult is not capable of making these decisions then, and only then, would there have to be a determination of what help, support, assistance, advocacy or intervention, the adult needs in order to end the abuse/neglect/self neglect.

An assessment of the adult's capability will follow standard assessment principles and procedures. It will be done by a multidisciplinary team in the adult's environment.

If the adult refuses to be assessed and there is a strong probability that the adult is not capable of making decisions about the abuse, neglect or self neglect, the Office of the Public Trustee/Public Guardian may apply to court for an order to allow assessment. The adult shall be given notice, have access to the assessment, have an advocate, and is entitled to a review and appeal of the assessment.

Emergency, Urgent and Action Required:

An emergency situation is defined:

Abuse and neglect are occurring and intervention is required. We recommend that an emergency situation be defined as one where no action within 48 hours would result in serious and permanent impairment of a person's health, or death. (Permissible intervention shall include the use of psychiatric treatment, including medication). In an emergency situation the adult may be removed to a hospital.

An urgent situation is defined:

Abuse and neglect are occurring and intervention is required. We recommend that an urgent situation be defined as one where no action within three to seven days will result in serious and permanent impairment, or death.

The Court may order a Temporary Substitute Decision Maker for specific interventions in urgent cases.

A situation in which action is required is defined:

Abuse and neglect are occurring and action is required but there is no emergency and the matter is not urgent. Intervention cannot occur without 1) consent of the adult or 2) assessment & court-appointment of Decision Maker with specified powers. If an adult has entered into a Representation Agreement the Representative's role is to make decisions about personal care or finances, as appropriate.

Review:

Emergency or urgent intervention may not continue once the emergency or urgency has passed, without consent of the adult. If there is a need to continue there shall be a review the adult's capability to give consent for the intervention. This review will take place:

1. if the patient requests a review, or
2. when his or her condition changes, or
3. within 72 hours if there is no change of condition and the treatment was in response to an emergency

situation, or

4. within 21 days if there is no change of condition and the treatment was in response to an urgent situation. (See appointment of a short term substitute decision maker below).

Appointment of a Temporary Substitute Decision Maker:

One of the interventions may be the appointment of a substitute decision maker. It may be appointed by a Court to give or refuse consent to specific aspects of an intervention, for example, health care, accommodation, finances. The substitute decision maker shall be temporary. The appointment expires after 21 days.

The Default:

If no one is available to become the Temporary Substitute Decision Maker the Public SDM or Trustee may be appointed. The Public SDM and Trustee should be required to follow strict guidelines when giving or refusing consent to aspects of the intervention. They must have the ability to visit the adult. The Office of the Public SDM must be regionalized in order to do this.

Development of a Care Plan:

A Care Plan must be put into place to ensure coordination and delivery of services, and ensure the situation is tracked to resolution. The adult should be consulted and involved in developing his or her Care Plan. The adult should consent to a specific intervention(s) and/or treatment plan.

Under no circumstances should the intervenor or substitute decision maker extend the scope of the intervention or course of treatment beyond the limits specified and, if possible, agreed to. If a new intervention or treatment is required or an intervenor or new health care professional becomes involved there will be a separate and different request for consent and, if necessary, assessment of the adult's capability to make decisions about this new intervention or health care professional. The only exception may be when an emergency, as defined above, occurs.

The adult shall be informed of his or her legal rights to appeal, review or overturn any action or the Care Plan.

Provision of Services:

A capable adult experiencing abuse, neglect or self neglect, may request and shall be offered a range of available services such as an assessment, case planning, counselling, therapy, respite or day care, vocational training, socio-recreational activities, homemaker services, nutrition, friendly contact, legal counsel, financial management, residential accommodation, medical treatment, personal or nursing care, and any other health, social or other type of service that may be necessary to meet the adult's needs.

An adult as defined in this legislation who needs intervention shall be entitled to receive the appropriate support, assistance, advocacy or services. Among these are: assessment, case planning, counselling, therapy, respite or day care, vocational training, socio-recreational activities, homemaker services, nutrition, friendly contact, legal counsel, financial management, substitute decision-making, residential accommodation, medical treatment, personal or nursing care, and any other health, social or other type of service that may be necessary to meet the adult's needs.

In addition to the above assistance and support there are other possible interventions, such as injunctions against an abuser; removal of abuser; freezing bank accounts and assets; removal of adult from the situation; placement of adult in facility or hospital.

Dealing with the Abuser:

The Office of the Public Trustee or Public Guardian may apply to Court to order that the abuser cease to reside in the same premises as the adult, whether or not the person has an interest in those premises (whether or not the person is the owner), refrain from any contact or association with the adult, and pay any support that the court may establish. The person subject to this order may appeal the decisions of the courts.

Development of a Support Network:

Advocates will be found for adults who do not have a personal support network, or whose support network has been compromised by allegations of abuse or neglect. The advocate's primary role would be to build or rebuild a support network.

FINANCIAL ABUSE:

Emergency Financial Intervention:

Where the Office of the Public Trustee is convinced that there is an emergency in which an adult is unable to manage his affairs or protect his estate and there is immediate danger of loss or serious damage to the estate, the Public Trustee may intervene in order to temporarily prevent or contain loss or damage. This intervention may only continue for 5 days. Further intervention requires a court order.

For example, the Office of the Public Trustee shall be able to prevent the sale of property by lodging a caveat.

Short Term Financial Management During Hospital Stay:

A process for short term financial management during a hospital stay may be developed. It would follow a modified assessment and contain due process procedures.

Long Term Financial Management to protect from Financial Abuse or Neglect:

Longer term protection of an adult's estate requires a standard assessment for financial management and Court ordered guardianship, triggering of a Representation Agreement (a Representative of Financial Affairs or a Representation Agreement in which the Public Trustee is chosen as Representative), or a Trusteeship.

COURT PROCESSES:

After the investigation has been conducted, and an assessment completed, the Office of the Public Trustee or Public Guardian may decide to initiate proceedings to formally determine the status of an adult and/or specify an appropriate course of action backed with the force of a court order.

The adult must receive notice of the application and the time and place of the hearing. A hearing must occur forthwith and the court may compel the attendance of witnesses. The adult is entitled to legal counsel (see below), review and appeal.

In emergencies the adult may be removed to a hospital prior to the court hearing.

The court may order that the abuser cease contact with the adult (see section entitled: Dealing with the Abuser).

The Office of the Public Trustee must prove to the court that the proposed intervention is the least intrusive, least restrictive and least stigmatizing form of intervention. The adult may not be moved from his or her home unless the Office of the Public Trustee or Public Guardian proves that adequate care and attention cannot be provided in the premises where the adult is residing. Where medical evidence at a hearing discloses that the adult requires treatment in a hospital, an order for hospitalization may be included in the court order. The Office of the Public Trustee or Public Guardian must prove that this is the least intrusive, least restrictive and least stigmatizing form of intervention.

The legislation must set out the procedure to be followed whenever it is felt that an order (including an order that is aimed at the abuser) should be revoked, renewed, changed, or terminated. This procedure should be available to the adult who is the subject of an order or the person exercising supervisory responsibility.

The orders must have a limited duration.

LEGAL SERVICES: An adult who is being abused or neglected should have the right to receive legal services. We recommend that these issues be covered under the legal aid tariff.

THE ROLE OF THE PUBLIC GUARDIAN:

The Office of the Public Guardian shall be responsible for ensuring that the mandate of the Act is carried out. It shall be a well-resourced, accessible office and able to react and respond to emergencies. The office shall have the ability to coordinate a province-wide program and work with related agencies such as the RCMP and police. Agencies with whom the Office of the Public Guardian works shall be trained, responsive, accountable and reviewable.

The Office of the Public Guardian may obtain a Court order for an investigation, assessment and/or intervention if the adult refuses or others refuse to cooperate.

INSTITUTIONAL ABUSE

When an adult enters a care providing facility, members of their support network should be given information about how to deal with and report incidents of abuse or neglect in the facility.

There shall be a Bill of Rights which shall apply to any care providing facility. This Bill of Rights shall be honoured by all care providing facilities.

The care providing facility is a home for the residents. Therefore, the care providing facility shall be operated in such a way that the physical, psychological, social, cultural and spiritual needs of the residents are met. The residents shall be given the opportunity to contribute, in accordance with their ability, to the physical, psychological, social, cultural and spiritual needs of each other.

Every care providing facility shall ensure that the following rights of residents are fully respected, promoted and ensured:

Every adult living in a care providing facility has the right:

> To be treated with courtesy and respect and in a way that fully recognizes the adult's dignity and individuality and to be free from abuse and neglect.
>
> To be properly sheltered, fed, clothed, groomed and cared for in a manner which meets with his or her needs.
>
> To be told who is responsible for and who is providing the direct care.

To have privacy respected when receiving treatment and care.

To keep and display personal possessions, pictures and furnishings, while respecting safety requirements and the rights of any other adult residing in the care providing facility.

To be informed about his or her medical condition, treatment and proposed course of treatment.

To give or refuse consent to treatment including medication, and to be informed about the consequences of giving or refusing consent.

To have the opportunity to participate fully in making any decision and obtaining an independent medical opinion concerning any aspect of his or her care, including any decision concerning his or her admission, discharge or transfer to or from a care provider.

To have his or her medical records kept confidential in accordance with the law.

To receive any support and assistance which could lead to independence.

To be fully informed when the use of restraints (whether physical or medication) are being considered and to be informed about the procedures and the consequences of receiving or refusing restraints.

To communicate in confidence, to receive visitors of his or her choice and to consult in private with any person without interference.

To have friends and family members present twenty-four hours a day if the adult's death is likely to be imminent.

To choose a person to receive information concerning any transfer or emergency hospitalization of the adult. If a person has been chosen, that person shall be kept informed.

To exercise the rights of a citizen. This means that the adult may raise concerns or recommend changes in policies and services on behalf of himself, herself or others to the Residents' Council, staff of the care providing facility, government officials, the Office of the Ombudsman, or any other person inside or outside of the care providing facility, without fear of restraint, interference, coercion, discrimination or reprisal.

To form friendships, to enjoy relationships and to participate in a Residents' Council.

To meet privately with his or her spouse or partner in a room that assures privacy. Where both spouses or partners live in the same care providing facility they shall have the right to share a room according to their wishes if an appropriate room is available. Every effort should be made for spouses requiring care to be placed together regardless of care level.

To communicate with their children and have their child care arrangements respected.

To pursue social, cultural, religious and other interests which may support the development of his or her potential, and to be given reasonable provisions by the care providing facility in order to accommodate these pursuits. Every effort should be made to allow an adult continuity of care and minimize transfers.

To be informed in writing of any law, rule or policy which affects the operation of the care providing facility, and of the procedures for initiating complaints.

To manage his or her financial affairs when able to do so. If the adult's financial affairs are managed by the care providing facility, the adult shall receive information about any transactions undertaken on his or her behalf, and to be assured that the property is being managed solely on behalf of the adult.

To live in a safe and clean environment.

To be given access to protected areas outside the care providing facility in order to enjoy outdoor activity.

PUBLIC EDUCATION AND TRAINING:

In order to ensure the success of this legislation a program of public education is necessary to encourage the public to recognize and then to report incidences of possible abuse. This should be undertaken by the Office of the Public Guardian.

Abuse can be seen to occur differently in the three environments: home, institutional settings and in the community. Each of these environments has different dynamics. There will be different responses to the abuse, neglect, and self-neglect, depending on the environment.

Professionals must receive education in their curriculum, and in their continuing education programs.

High School curriculum must include education about this legislation and related programs, perhaps in Consumer Education.

Licensing of care providing facilities must include the requirement that they have appropriate policies about abuse, neglect, or self-neglect occurring in their facility.

ASSISTANCE, SUPPORT AND ADVOCACY:

While it is imperative that this legislation be implemented immediately, the Act and the provision of services under the Act will not be acceptable without the implementation of a province wide Advocacy Program. Without assistance, support and advocacy, this legislation will be missing an essential component.

Throughout the process contemplated by this legislation are the following occasions when assistance, support and advocacy must be provided.

> The adult needs someone who will ensure that this investigation is calm, fair, and objective.
>
> The adult needs someone to be on their side and to ensure their voice is heard.
>
> The adult needs information and an explanation about the process and outcomes.
>
> The adult needs someone to minimize intimidation.
>
> The adult needs to have privacy respected.
>
> The adult might need a support network put into place to break the isolation.
>
> The adult needs a re-establishment of the power balance, that is, control must be returned to the adult.
>
> The adult needs assurance that any possibility of retaliation will be resolved and monitored.
>
> Where possible, the adult needs to be assured that the adult won't be removed from his or her home, but that the abuser will be removed.
>
> The adult needs assistance in re-building self-esteem.
>
> The adult's needs for legal and police assistance must be met.

CONSENT TO HEALTH CARE

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A FRAMEWORK DOCUMENT

CONSENT TO HEALTH CARE

INTRODUCTION:

All adults shall be presumed of being capable of giving or refusing consent to medical treatment unless an assessment shows otherwise.

All adults who are capable of making treatment decisions have the right to refuse or consent to treatment, including psychiatric treatment and medications.

There shall be a legislated system for adults who are not capable of making health care decisions in urgent and emergency situations. The court process for the appointment of a decision maker will be used in all other health care situations.

The legislation will define an emergency and an urgent situation. The legislation will provide for these decisions to made by a doctor in an emergency situation. In an urgent situation, a temporary decision maker will be appointed to make the health care decision on behalf of the adult.

The legislation will set out time periods during which the authority of the temporary decision maker is effective.

EMERGENCY, URGENT OR ACTION REQUIRED:

What is the definition of EMERGENCY?

Emergency:

> An emergency health care situation is defined as one in which treatment may proceed without consent of the adult where no action within 48 hours would result in serious and permanent impairment of the adult's health, or death. patient only if this treatment is necessary in order to save Treatment includes psychiatric treatment, including medication.

What is the definition of URGENT?

Urgent::

> An urgent health care situation is defined as one in which no action within three to seven days will result in a serious and permanent impairment, or death. Treatment includes psychiatric treatment, including medication. Consent for the treatment must come from an authorized decision maker. The legislation provides that a temporary substitute decision can be appointed from a statutory list.

Action Required:

Medical treatment is required but there is no emergency and the matter is not urgent. Treatment can wait at least 8 days. Treatment cannot continue without 1) consent of the adult 2) consent by a Representative or 3) assessment & court-appointment of decision maker who then is able to provide an informed consent to treatment.

WHAT IS THE SCOPE OF THE CONSENT?

When an adult consents to a specific procedure or course of treatment from a specific doctor, the scope of the procedure or course of treatment extends only to what was contemplated at the time of consent. If new treatment is required or a new doctor becomes involved, there will be a separate and different request for consent. When an adult is not capable of giving consent to a treatment, the appointed decision maker has the same rights to as the adult would have had. If necessary, assessment of the adult's capability to make decisions about this new treatment or doctor. The only exception may be when an unexpected emergency, as defined above, occurs.

Emergency or urgent treatment may not continue once the emergency or urgency has passed, without consent.

If there is a need for treatment to continue there shall be a review of the adult's capability to give consent for this treatment. This review will take place:

1. if the patient requests a review
2. when his or her condition changes
3. within 72 hours if there is no change of condition and the course of treatment is in response to an emergency situation, or
4. within 21 days if there is no change of condition and the course of treatment was in response to an urgent situation. (See appointment of a short term substitute decision maker below).

This review is imperative because, for example, shock from the trauma, the use of painkillers and sedation for an operation may make a person incapable of giving consent.

TRAVEL FROM REMOTE AREAS:

Special time provisions should be provided for treatment which requires travel from remote areas.

WHEN EMERGENCY TREATMENT IS REQUIRED:

1. The adult shall be informed about the medical treatment.

   The doctor shall explain what's wrong (ie. the condition).

The doctor shall explain what treatment is being recommended.

The doctor shall explain the benefits and risks.

The doctor shall ask the adult for consent.

Throughout the process the doctor asks the patient to repeat this back in the patient's own words as a way of checking whether the adult is understanding.

2. If the adult is capable of making the treatment decision, that decision shall be honoured.

3. (a) Where possible, if the adult's capability of making this decision is in question, the doctor shall ask people close to the adult to help inform the adult and determine whether the adult understands the nature of the treatment and possible results of the treatment. This is to ensure that any communication difficulties, hearing impairment, or language problems are eliminated. Care must be taken with ethnic/cultural concerns. Where possible, family assistance should be sought, encouraged, and validated with non-verbal patients.

   (b) If the adult appears to be incapable of making the decision every effort, where possible, shall be made to look for future planning. The registry must be open 24 hours per day. The family doctor should be contacted.

4. If the doctor decides that the adult is incapable of making this decision at least two doctors shall see the patient and give consent. This is critical and nearly always possible although it might be impossible for example, in a tiny town in the middle of the night. In such a circumstance it may be possible for the doctor to use a tele-conference, for example.

WHEN URGENT MEDICAL TREATMENT IS REQUIRED:

1. The adult shall be informed about the medical treatment.

   The doctor shall explain what's wrong (ie. the condition)
   The doctor shall explain what treatment is being recommended.
   The doctor shall explain the benefits and risks.
   The doctor shall ask the adult for consent.

   The doctor asks the patient to repeat this back in the patient's own words as a way of checking whether the adult is understanding.

2. If the adult is capable of making this decision, that decision shall be honoured.

3. (a) If the adult's capability of making this decision is in question, the doctor shall ask people close to the adult to help inform the adult and determine whether the adult understands the nature of the treatment and possible results of the treatment. This is to ensure that any communication difficulties, hearing impairment, or language problems are eliminated. Care must be taken re ethnic/cultural concerns. Family assistance should be sought, encouraged and validated with non-verbal patients.

   (b) The doctor shall search for future planning.

4. When capability to give consent is in question, no pre-planning is in place, and an assessment is required the following shall occur:

   (a) The adult and their available support system shall be informed about the assessment and told how to participate.

   (b) A group of people must be involved in the assessment:

   The attending doctor (The family physician shall be contacted).

   The adult.

   People who the adult has authorized in a Representation Agreement to participate in an assessment.

   People close to the adult, eg. family unless not acceptable to the adult.

   Advocate or helper (if different from the latter)

IS THE ADULT CAPABLE OF MAKING A TREATMENT DECISION?:

An assessment team may make the decision about whether the adult is capable or not capable of consenting or refusing a specific urgent treatment.

There shall be provisions for a complete review and appeal of the assessors' decision. There shall be a person or group of people available to review an assessment. This person or group must be available to meet quickly, be independent, able to make decisions about capability, able to understand medical evidence, and able to be sensitive to the needs of adults in this situation. The review must be efficient and inexpensive. The Office of the Public Guardian shall be responsible for these reviews. This review may be done by a Master or Judge, tribunal or hospital review/ethics committee. Appeals shall be done by a Judge.

APPOINTMENT OF A SHORT TERM SUBSTITUTE DECISION MAKER:

A temporary substitute decision maker may be appointed to give or refuse consent to this specific urgent procedure or course of treatment as outlined by the adult's specific doctor. The appointment of the temporary substitute decision maker expires after 21 days. This appointment may be extended only if the temporary substitute decision maker (or someone else) has applied to court for permanent appointment of a decision maker. This extension will last only until the date of the appointment of a permanent decision maker.

The substitute decision maker shall be chosen, in order of priority, from the following list and procedures:

(a) The adult's decision maker appointed by the court,

(b) The person appointed by the adult in an Representation Agreement for Personal Care or a Registered Natural Support Network,

(c) A spouse of the adult, or a partner who lives in a relationship with the adult,

(d) A child of the adult, a parent of the adult or a person who has lawful authority to stand in the place of a parent,

(e) A brother or sister of the adult,

(f) Any other next of kin of the adult,

(g) The Public Guardian.

A person on this list shall only exercise this authority when the person:

(a) is apparently capable of making this decision, and

(b) is available and willing to make the decision to give or refuse the consent, and

(c) has been in personal contact with the adult over the preceding twelve-month period, and

(d) knows of no conflict or objection from any other person higher up on the list who claims the right to make the decision.

If a person in a category in this list refuses consent on the adult's behalf, it is not possible to seek the consent from people in a subsequent category. In a situation occurs where this has been done, the consent is not valid.

If two people on this list claim the authority to give or refuse consent, the one higher up on the list prevails.

If the adult disagrees with the choice of temporary substitute decision maker, mediation or conciliation shall be provided. If this mediation or conciliation fails to resolve the matter, the appointment will be taken to a Master, Judge, tribunal or hospital review/ethics committee for a final decision. Only the adult may request this mediation or conciliation.

This temporary substitute decision maker may require, and should be entitled to receive support to make this decision.

This decision will be made in the way described in the duties and powers of a Substitute Decision Maker.

The doctor shall ask the substitute decision maker what the wishes of the adult would have been in giving or refusing consent to this specific intervention or course of treatment by this specific doctor. Consent or refusal shall be given on this basis. The temporary substitute decision maker should make every effort to follow the adult's pre-expressed wishes.

THE DEFAULT SYSTEM: What happens when no one is available to make the treatment decision?:

The last person in the list of substitute decisions makers is the Public Guardian. The Public Guardian must follow strict guidelines when called upon to make a substitute decision on behalf of anyone. The Public Guardian must visit the adult and meet with the doctor to discuss the treatment. The Office of the Public Guardian must be regionalized in order for this to be accomplished.

CONFIDENTIALITY AND ACCESS TO MEDICAL RECORDS:

While it may be true that the medical records (this includes computer discs, x-ray, chart) of an adult belong to the institution, the information on those records belongs to the adult. The adult shall have access to that information. The adult has the right to examine and to copy the clinical record or a copy of the clinical record of the adult's examination, assessment, care and treatment. No person shall disclose this information to any other person without the written consent of the adult.

Information may be released to the appointed Temporary Substitute Decision Maker only after the adult has been found to be incapable of giving consent to release of the information. Only information that is relevant to the issue that has to be decided may be released to the Temporary Substitute Decision Maker. The Temporary Substitute Decision Maker shall have access to the relevant information. The Decision Maker shall respect the adult's privacy and keep this information in confidence.

Personal information may be disclosed only with the adult's consent. The consent is for specific information to be disclosed to a specific person for an identified purpose.

ASSESSMENTS OF AN ADULT'S ABILITY TO MAKE CERTAIN DECISIONS

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A FRAMEWORK DOCUMENT

ASSESSMENTS OF AN ADULT'S CAPABILITY TO MAKE CERTAIN DECISIONS

ACKNOWLEDGMENT:

We would like to acknowledge Stephen J. Anderer, a student in the J.D.-PhD. Program in Law and Psychology at Villanova University School of Law and Hahnemann University Graduate School. His article "A model for Determining Competency in Guardianship Proceedings", printed in MPDLR in April 1990 was the basis for our discussion and recommendations.

PRINCIPLES:

All adults are entitled to the presumption that they are capable of making decisions.

Incapability is a legal, not a medical, decision. The issue of capability should be presented to the court as a TRIABLE ISSUE OF FACT.

An adult may be not capable with respect to his or her ability to make one type of decision, while retaining capability in other areas, since the skills necessary in one situation may differ from those required in another. Assessments of capability should be relevant to that specific issue or decision.

Capability is not necessarily static. Changes in environment, diet, health medication or social support may affect an adult's capability to make certain decisions. An adult's skills may improve with treatment, rehabilitation, or the passage of time. Therefore, a periodic REVIEW is imperative.

WHEN DOES AN ASSESSMENT OCCUR?

An assessment should only be considered if the adult needs to make important decisions and these cannot be handled in any other way.

An adult may refuse to be assessed unless the court orders an assessment. The court shall order the assessment only if the adult is endangered or is endangering others.

WHEN IS AN ASSESSMENT NEEDED?

Assessment tools are needed to ascertain whether the adult:

- has the capacity to marry
- can instruct a lawyer
- can consent to a health care decision
- can manage their financial and legal affairs
- can manage their personal care
- can write a Representation Agreement
- needs to have their Representation Agreement triggered
- can revoke a Representation Agreement or Court order

- can access their medical records
- is not capable, on their own, of demanding a stop to the abuse or neglect, or to end the self neglect they are experiencing.

PRIOR TO THE ASSESSMENT:

It should be ascertained whether the adult has set up any informal arrangements which would be sufficient to prevent the adult from needing any further intervention. If there are suitable informal arrangements an assessment shall not occur.

Then the assessment team should enquire into whether there are formal arrangements which would obviate the need to carry out an assessment. If there are suitable formal arrangements an assessment shall not occur. For example, if the adult really only needed financial management for a period of time, and there was a Representation Agreement for Finances in place, the assessment need not occur (unless this is the predesignated "Triggering Event").

The assessment, which is costly and intrusive, should usually be considered as a last resort.

The adult shall be asked if they would be willing to participate in an assessment. The adult has the right to refuse to be assessed unless ordered by the court.

An advocate shall be included and, if necessary, be provided for the adult during an assessment.

Any conflicts should be mediated prior to any assessment taking place.

RIGHTS AROUND THE ASSESSMENT:

The rights that an adult should expect to have respected are:

- the right to be informed about the assessment before it takes place and the right to be asked whether they would be willing to be assessed.

- the right to know that the assessment is going to happen and what will take place

- the right to know their rights about the assessment and any results of that assessment

- the right to refuse to submit to the assessment unless it is court ordered

- the right to be present

- the right to have a friend or family member present

- the right to have access to an advocate or rights advisor present
- the right to be informed about the results of the assessment and the consequences of any decision arising out of the assessment
- right to review the assessment decision (to have it in writing, read to them and have it explained if necessary)
- right to revoke consent
- right for the adult to request a second opinion of any of the assessor's opinions

After the assessment, the recommendation goes to Court for a decision, that is, the assessors do not make the final decision.

THE ASSESSMENT

All assessments must begin with the presumption that the adult is capable of making decisions.

The adult should be present and have input into all parts of the assessment.

Assessments should identify the level of difficulty, such as whether the adult would still be able to make some kinds of decisions, (where do I want to live? what do I need to pay for?), or whether there are no decisions for which the adult will be able to make (there are terms used to describe this difference - **focal**, meaning narrow area where decision-making is sufficiently sound to permit the adult to continue to make such decisions; or **plenary**, meaning that the adult is unable to make any decisions)

The assessors must know about the areas to be assessed as the breadth of the assessment should be governed by the triggering incident, or concern. Assessment should proceed based on the area of concern identified , i.e., if the concern was financial, the assessment would proceed by examining the adult's financial decision making ability - this is called a "focal" assessment.

There are categories of decisions that were identified: Financial and Legal Affairs, Health Care Decisions and Personal Care.

Assessments should identify the areas of impairment of the decision-making ability, and/or in functional ability.

Assessments should identify the length of time decisions should be made for the adult, short term or long term.

The assessment must be carried out over time yet it should be time-limited.

The assessment must be in context of the persons history and lifestyle, carried out in an environment familiar to the adult. The assessment must have a responsiveness and a continuity with the adult's past.

Different communication needs of the adult should be recognized, this is especially important for adults who have communication limitations, or who speak a language other than English.

The assessment must be a complete in order to rule out reversible causes for an adult's difficulties. It might include a complete physical assessment to rule out a physical basis for the difficulties.

Assessment tools must be standard, yet flexible and sensitive and shall apply throughout province.

The assessment should be dynamic and reviewable.

The Office of the Public Trustee has implemented a short, emergency assessment for an adult who appears to be not capable of managing their finances. We recommend that an evaluation be made of that document and assessment tool.

WHERE DOES THE ASSESSMENT OCCUR?

The assessment must take place in an environment familiar to the adult, if possible in their place of residence. Extra care needs to be taken if the adult is in an unfamiliar place such as a hospital.

WHO ASSESSES:

Assessment must be carried out by a multi-disciplinary group made up of the following people: the adult, people close to the adult and/or people predesignated by the adult and the relevant professionals with the appropriate qualifications or certification.

The assessment must involve people who are: knowledgable, culturally sensitive, reliable, consistent, those who have no conflict of interest, and who understand the value base of the adult.

Doctors, and perhaps other professionals participating in assessments, should be specially trained and certified. It is recommended that the BCMA be encouraged to establish a certification program for doctors.

A person, perhaps in the Office of the Public Guardian, should scrutinize the assessment forms and keep a registry of people who are certified to participate in assessments.

The adult's family doctor should be involved or consulted, especially in small communities where privacy is important and be family physician is trusted to respect that privacy.

Each person in the assessment should have a specific, defined role. For example, in assessments of an adult's capability to make financial decisions a doctor should be involved to give a prognosis only. There needs to be good research developed and implemented over the next two years on what these roles are and how these assessors interact. This also is recommended in Ontario's 1991 Weistub Report on Mental Competency.

We believe that the assessment group can act independently providing information to the coordinator unless there is conflict in which case the coordinator should ask the group to meet.

TEMPORARY ASSESSMENT FOR EMERGENCY AND URGENT SITUATIONS:

An order for temporary substitute decision making should be allowed in acute situations. Temporary decision-making authority should be very specific, time limited and have many safeguards built-in.

This process is outlined in the Chapterson Consent to Health Care and Abuse, Neglect and Self Neglect. In these cases there must be a shorter assessment. Research should be developed and implemented, including a literature search, over the next two years to identify an acceptable shorter assessment for specific decision making issues.

REFUSAL OF ASSESSMENT:

An adult may refuse to be assessed unless the court orders the adult to be assessed. The court shall order the assessment only if the adult is endangered or is endangering others.

PREVENTION:

Laws and programs should be utilized to the extent possible, to prevent the need for an assessment and to maximize the adult's opportunity to stay outside of the Court process.

RECOMMENDATIONS FOR RESEARCH:

Research needs to be done on various issues:

1. The coordinating role - who is the coordinator of the assessment and how do they coordinate the assessment process

2. Standard assessment tools - for various specific issues. Information on whether a different assessment tool is needed for different disabilities.

3. research on the roles of the assessors - who should be

involved and what are their roles and responsibilities, what training does an assessor need in order to be certified, etc.

4. Compilation and analysis of data from the results of assessments

5. Monitoring and evaluation of the assessment process

6. Development and evaluation of smaller evaluation tools - for example, a short assessment of an adult's ability to instruct a lawyer, assessment in order to trigger a Representation Agreement.

7. Research on the outcome of rehabilitation or training programs for an adult found to be not capable of making certain decisions.

8. A process to monitor and evaluate the assessors

It is important to monitor other research. The Weistub Report on Mental Competency in Ontario, the Canadian Medical Association and the B.C. Medical Association are encouraging or doing research in this area. The Baycrest Centre in North York continues to research this area. Care should taken to coordinate research efforts.

QUESTIONS FOR THE COURT:

The following are questions the court is being asked to decide and the information that is required to go to court. The proposed Decision Maker, not the assessment team, is responsible for gathering the information and presenting it to court.

THE QUESTIONS THE COURT IS BEING ASKED TO DECIDE:

1. Does the adult have a health care, personal care, financial, or legal decision that needs to be made?

2. Does the adult have the capability to make this decision?

3. Has all the relevant evidence been presented to the court? If not, what information should be ordered? (See next section)

4. Is intervention required? What is that intervention? If that intervention is substitute decision making what category is required (ie. Associate or Substitute Decision Maker, or Guardian)? Within that category what are the powers?

5. Is the person who is making the application the appropriate person?

6. When should this decision be reviewed?

INFORMATION FOR COURT:

The following is information that is required by the court to determine whether the adult is legally incapable of making certain decisions and/or in need of intervention. The information that may be provided by the assessment is marked with a *.

Only information that is relevant to this case should be presented to court.

The evidence must include information about the need for intervention and demonstrable evidence for the reasons for concern. That is, evidence that shows the adult has to make a health care, personal care, financial or legal decision.

* Relevant, objective evidence needs to be presented that shows that the adult is not capable to make that decision;

Information from the adult, advocate, family, records, court investigators, service providers, etc.;

Whether or not this is the only decision that will be required of the court or whether there will be other decisions that will be need to be made in the future;

Does the adult have any Representation Agreement or a Registered Support Network? If so, explain and describe;

The adult's preferences about support or Decision Making including what they think, feel, believe and value relevant to this issue;

* The recommendation from the assessment team, options, and information about whether these options have been tried before, and information about the adult's willingness to participate in these options;

* Diagnosis and prognosis, if relevant;

* Assessment of activities of daily living, if relevant;

* The adult's environment and its demands on the adult

* The adult's social support network, including family, friends and agencies and its impact on the adult's functioning

The adult's financial and legal situation, if relevant;

* Specific assessment of the dangers which will result from not intervening;

* The relevant training, certification, professional designation and experience of the assessors;

- The source of the assessor's information and the reliability of those sources and information, eg. interviews, formal tests, formal or informal observation, location of assessment, whether the information is first-hand or not, etc;

  Any relevant reports from mediation;

  The purposes and interests of the various parties, especially the adult and the proposed Decision Maker. The suitability and ability of the proposed Decision Maker. The proposed Decision Maker's written plan for the adult. Character references.

ASSISTANCE, SUPPORT AND ADVOCACY:

The adult might need assistance, support and advocacy during an assessment of an adult's capability of making certain decisions:

It is important that an assessment of an adult's capability to make certain decisions is only done after all other avenues are exhausted.

Someone must meet with the adult prior to the assessment to find out who the adult wants to participate with them, who the adult does not want to participate, and what the adult wants or needs through this process, for example, where the adult would feel most comfortable having the assessment take place.

The adult needs someone who will establish communication needs, cultural/ethnic needs, or personal issues such as a hearing impairment and to ensure that these needs are met.

The adult needs someone to ensure that the adult is included in the process, that people are not speaking over the adult's head, and someone to help decrease the intimidation or coercion.

The adult needs someone to explain the process: who is involved, what is happening during the assessment and the possible outcomes.

The adult needs someone to explain that the assessment is not the final decision. The adult needs someone to provide information about the decision maker and how the decision will be made.

The adult needs information about how they and people close to them can give input into the decision.

The adult needs someone to ensure confidentiality and access to this information for the adult. They need to have someone who will challenge this information, if necessary. They need someone who will ensure that only relevant and substantiated evidence is heard.

ASSESSMENT TOOLS

The following are recommendations for the assessment information that would be required to be presented to the Court. This information should be placed in the Regulations of the proposed Act as a required form. This would make the assessment standard and would guide the assessment process. It is important to stress again that not all information should be required for each type of assessment. For example, an adult's hygiene might be irrelevant to decide whether the adult can manage their finances.

RELEVANT DIAGNOSIS AND PROGNOSIS:

What is the relevant diagnosis?

How is it relevant to the issue?

Describe the condition, including:

When did it start?
How long has this been going on?
Are the symptoms constant? or do they fluctuate? how do they fluctuate?
Is it static or progressive?

How was it diagnosed? What tests were performed? By whom? How long did they take? Was there a helper/advocate for the adult present during the assessment? Were there communication difficulties due to language or mental state? How were these difficulties accommodated? Is this diagnosis in the current version of the DSM?

What was the level of contact between the expert and the adult? How long/often was this interaction? What is the relationship between the expert and the adult, eg. is he or she a long time family doctor or a stranger?

What is the degree of certainty with which the diagnosis is reached?

Are there alternative or secondary diagnoses? Would other information or the passage of time alter this diagnosis?

Are there any other factors that might affect the adult's cognitive state? eg. medication, nutrition, depression, recent change in environment, blood pressure or metabolic abnormalities

What is the prognosis? (establish time frames for review, etc.)

Has rehabilitation been tried? eg. has there been training or could other communication methods be helpful?

SOCIAL SUPPORT NETWORK INQUIRY:

Are family members and friends assisting the adult?

How are they assisting the adult?

Is there conflict between the adult and the family or friends?

Is there conflict between the various family members and friends?

Is there contact with social support agencies or people? What is that contact?

Is the adult in a Day Program or a similar type of activity?

Is there planning, for example an Individual Program Plan, in place already for the adult?

ACTIVITIES OF DAILY LIVING INQUIRY:

1. CARE OF SELF:

Nutrition:

Is the adult able to maintain a proper diet?
Is the adult able to acquire, store, and prepare food?
Is the adult able to eat?
Do meals meet his or her nutritional needs?

Clothing:

Is the adult able to dress and undress?
Are his or her clothes adequate for the weather?

Personal hygiene:

Is the adult able to wash himself or herself?
Is the adult able to use the bathroom?
Does the adult keep their clothes clean?
Does the adult keep the living environment clean?

Health Care:

Is the adult able to take care of minor health problems?
Does the adult follow prescribed routines and take prescribed medications?
Does the adult take precautions against illness?
Does the adult alert others of serious health problems or reach doctor if necessary?
Does the adult relay the necessary health information to the health care providers?

Residential:

Is the adult able to maintain shelter that is safe and adequately

heated and ventilated?
Can he or she contact people to make routine repairs?
Does the residence create an environment in which the respondent can meet his or her other needs?

Safety:

Does the adult exhibit life-threatening behaviours (eg. wandering, leaving a stove lit, provoking others)?
Is he or she able to recognize and avoid hazards in the home (eg. high water temperatures, fire hazards)?
Does the adult handle emergencies (eg. fires, break-ins, floods)?
Does the adult contact others (friends, relatives, agencies, police) if necessary?
Does the adult recognize when others present danger and avoid that danger?

2. CARE OF PROPERTY:

Acquisition:

Is the adult able to collect money or benefits to which he or she is entitled?
Can he or she collect some but not all, such money or benefits?

Administration:

(a) Daily money management

Is the adult able to handle small amounts of currency? Large amounts? Handle check writing? Safeguard money (eg. lock it away, put it in a bank)? Make routine purchases such as groceries and clothing? Pay bills for necessary goods and services? Budget for everyday expenses? Do others take advantage of him or her (eg. by overcharging or providing unnecessary services)? Does he or she give money or property away to strangers or follow their suggestions?

(b) Investment/Major Expenses:

Is the adult able to budget for major expenses? Balance accounts? Make investments?

(c) Disposition:

Is the adult able to make plans for disposing of his or her assets? Are the plans erratic or in conflict with previously expressed wishes?

DECISION MAKING/COMMUNICATING CAPACITY INQUIRY:

If the adult is not doing well in some areas of daily living the court should inquire into the adult's awareness of his or her difficulties in this/these areas only. This section suggests that there is a need for a method for assessing the adult's ability to "receive and evaluate information" or to "make or communicate decisions."

The examination of the adult's decision making capability should focus on decisions that the adult needs to make, rather than on his or her general decision making capability, particularly decisions in the activities in which the adult is not doing well.

Three areas are:

1. Personal decision making:

   a. Assessing decision making regarding nutrition, clothing and personal hygiene

Is the adult aware of unmet needs? Has the adult been informed of alternatives available to assist with those unmet needs? After being informed about alternatives, is he or she aware of them?

   b. Expressing a preference

If the adult is aware of the alternatives, can he or she express a choice? Is this choice stable? Can the adult remember the choice?

   c. Understanding, appreciation, and reasoning

Can the adult understand the risks, benefits and alternatives to their actions about nutrition, clothing and personal hygiene?

2. Property decision making

   As above, is the adult (a) Aware, (b) Able to express a preference, and (c) able to understand, appreciate and reason about decisions about property?

Does the adult understand how the various transactions affect him or her?
Does the adult have experience with financial transactions?
What is their potential for learning to understand the nature of various transactions?
If the adult is not fully able to manage his or her estate, can he or she make decisions about a choice of manager or express a preferred management approach?

3. Decision making on other legal actions - does the adult have the capability to marry, initiate, defend and settle lawsuits, testify or serve as a juror, vote, hold a driver's license or a professional license.

DUE PROCESS, MEDIATION AND COURT PROCESSES

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A FRAMEWORK DOCUMENT

DUE PROCESS, MEDIATION AND COURT PROCESSES

THE SUPREME COURT OF B.C.:

All adults shall be assumed to be capable of making decisions until that right has been modified in a court process. This principle shall be reflected in the legislation.

Any order modifying an adult's right to make decisions shall be decided in the Supreme Court of B.C.

We recommend that the Supreme Court develop a list of Judges interested and experienced in dealing with these matters.

THE NEED FOR A COURT PROCESS RATHER THAN A TRIBUNAL:

After a great deal of discussion it was decided that the experience of the judiciary is critical. Their expertise is necessary in making these serious determinations about an adult's decision making ability . A tribunal would be constitutionally possible, but not preferred.

PRIOR TO COURT:

Advocacy, community supports, involvement of an adult's support network, Representation Agreements, and community based mediation should be facilitated. These are crucial in resolving problems and providing supports which may prevent the adult losing their rights to make decisions and avoid a court process which is seen to be costly and a last resort.

Community based mediation prior to the court shall be available to the adult. The aim of the pre-court mediation is to resolve disputes or to reach a consensus about the order to be requested. Mediation might also establish that provision of a community service might be sufficient support for an adult, rather than looking at the issue of an adult's capability. Community based mediation may be able to resolve disputes between Decision Makers/Representatives for Personal Care and Decision Makers/Representatives for Financial Affairs.

An advocate for the adult should participate in mediation with the adult.

The mediator may meet privately with the adult in order to ensure that there is no coercion or undue influence.

Once the issue has reached court the judge shall have the discretion to adjourn in order to provide the opportunity for mediation.

COURT ORDERS

The Court's discretion must be exercised so as:

- to make the least restrictive, intrusive and stigmatizing intervention in the life of an adult, having regard to their capability of making certain decisions
- to enable and encourage the adult to exercise and develop their decision making capability to the greatest extent possible

THE QUESTIONS THE COURT IS BEING ASKED TO DECIDE:

1. Does the adult have a health care, personal care, financial, or legal decision that needs to be made?
2. Does the adult have the capability to make this decision?
3. Has all the relevant evidence been presented to the court? If not, what information should be ordered? (See next section)
4. Is intervention required? What is that intervention? If that intervention is substitute decision making what category is required (ie. Associate or Substitute Decision Maker, or Guardian)? Within that category what are the powers?
5. Is the person who is making the application the appropriate person?
6. When should this decision be reviewed?

The Court cannot order the provision of community services but can order that community supports be investigated. The Court may order that the case be adjourned for a period of time (as in 15 days) in which to determine whether community supports can or should be in place.

The Court should take into consideration the likelihood that the person may be unduly influenced by those around them.

The adult shall be given the opportunity to speak in court.

The Court shall make orders with respect to the powers of the Associate or Substitute Decision Maker, or Guardian. These duties and powers shall be:

DUTIES AND POWERS OF THE DECISION MAKER:

Decisions should be made in the following order:

1. The adult should be enabled and encouraged to exercise and develop their decision making capability to the greatest extent possible.

2. If an adult needs help making decisions, this help should be given through supported decision making.

3. When an adult is deemed to be incapable of making a decision a Substitute Decision Maker or Guardian shall make decisions on his or her behalf in the following way:

    a) diligently

    b) in good faith

    c) in a manner so as to ensure that the adult's civil and human rights are protected;

4. The Substitute Decision Maker or Guardian shall encourage the adult to:

    a) participate to the maximum extent in all decisions affecting the adult; and

    b) act independently in all matters in which the adult is capable; and

5. The Substitute Decision Maker or Guardian shall limit their interference in the adult's life to the greatest extent possible.

6. When the Substitute Decision Maker or Guardian has to make decisions, they shall be made in the following order of priority:

    a) according to the adult's expressed wishes

    b) in a manner consistent with the adult's values, beliefs, and wishes

    c) if a) and b) are not known and cannot be ascertained then the Substitute Decision Maker or Guardian will act in the adult's best interests.

The Substitute Decision Maker or Guardian shall make every effort to be guided by the adult's expressed wishes except where to do so is impossible, puts them at risk or is against the Criminal Code.

If the legislation or adult's instructions do not make it clear to the Substitute Decision Maker or Guardian how to decide a certain matter, he or she may seek instructions from the Court. The Court may then make an order which the Court believes will not be in contravention of the Act or regulations, but which the Court believes is necessary for the best interests of the adult.

LIMITS:

Certain decisions cannot be delegated to an Associate or Substitute Decision Maker, or Guardian and the legislation should reaffirm existing rules and set out additional prohibitions. Some examples are: voting, marriage, instituting divorce proceedings, wills, non-therapeutic sterilization and consent to the adoption of children.

WHO MAY APPLY TO THE COURT FOR AN ORDER?

Anyone may apply to the court for intervention, including a Decision Making order. Community based mediation should resolve disputes or reach a consensus prior to the order being requested.

WHO SHALL REVIEW THESE APPLICATIONS?

These applications shall be reviewed by the Public Trustee or Public Guardian, and a report be made to the court. Their role is to ensure that the costly, last resort court process is required and that all the appropriate evidence is prepared.

IS THIS A FULL COURT HEARING OR A CHAMBERS APPLICATION?

It is our preference that there be full court hearings but understand that court processes are expensive and court time is difficult to get. These applications should be handled as expeditiously as possible.

A Chambers Application would be allowed only in the following circumstances:

a) if it is determined that the adult would be unable to understand and participate, or

b) if it is determined that it would be injurious to the adult's health to participate, or

c) if the adult does not dispute the application.

Evidence shall be presented to the court, from the party alleging that the adult should not attend in Court, establishing that the adult is unable to understand and participate or that it would be injurious to the adult's health to participate.

Evidence is required to establish that the adult has been fully involved and informed in order to make the decision not to dispute the application. Legal counsel shall be available for this purpose.

WHO SHALL APPEAR IN A FULL COURT HEARING?

All interested parties have the right to attend the court process.

The Applicant shall appear in court.

If a court hearing is required and the adult is physically unable to attend, the court shall go to the adult.

A member of the assessment team may be required to attend Court.

The Court may order that witnesses be excluded from the Court room until they have given evidence.

The adult's advocate shall be able to attend the whole proceedings even though they may be a witness to the proceedings.

WHO SHALL BE GIVEN NOTICE?

The adult shall be given notice.

The adult's Representative(s), Registered Support Network, Associate or Substitute Decision Maker (for other issues), if any, shall be given notice.

The proposed Decision Maker shall be given notice.

The Office of the Public Trustee, Public Guardian, and Advocacy Office shall be given notice.

The adult's family members may be given notice. This needs further clarification.

The adult shall be told who has been given notice.

Notice shall not be served by the applicant.

An affidavit must be presented to the court explaining that notice was given and the nature of the proceedings were explained to the adult. The affidavit should also detail the manner of the explanation and the adult's response.

THE EVIDENCE

Information that is required by the court to determine whether the adult is legally incapable of making certain decisions and/or in need of intervention:

> Only information that is relevant to this case should be presented to court.

The evidence must include information about the need for intervention and demonstrable evidence for the reasons for concern. That is, evidence that shows the adult has to make a health care, personal care, financial or legal decision.

Relevant, objective evidence needs to be presented that shows that the adult is not capable to make that decision;

Information from the adult, advocate, family, records, court investigators, service providers, etc.;

Whether or not this is the only decision that will be required of the court or whether there will be other decisions that will be need to be made in the future;

Does the adult have any Representation Agreement or a Registered Support Network? If so, explain and describe;

The adult's preferences about support or Decision Making including what they think, feel, believe and value relevant to this issue;

The recommendation from the assessment team, options, and information about whether these options have been tried before, and information about the adult's willingness to participate in these options;

Diagnosis and prognosis, if relevant;

Assessment of activities of daily living, if relevant;

The adult's environment and its demands on the adult

The adult's social support network, including family, friends and agencies and its impact on the adult's functioning

The adult's financial and legal situation, if relevant;

Specific assessment of the dangers which will result from not intervening;

The relevant training, certification, professional designation and experience of the assessors;

The source of the assessor's information and the reliability of those sources and information, eg. interviews, formal tests, formal or informal observation, location of assessment, whether the information is first-hand or not, etc;

Any relevant reports from mediation;

> The purposes and interests of the various parties, especially the adult and the proposed Decision Maker. The suitability and ability of the proposed Decision Maker. The proposed Decision Maker's written plan for the adult. Character references.

The evidence must be adequate and demonstrable.

The decision must be made on a preponderance of the evidence. (That is, it must be more than a "balance of probabilities - more than 50% sure, and less than "beyond a reasonable doubt").

The court hearing must be recorded.

Rules and procedures must be established to protect the confidentiality of information produced in these matters.

DISPOSITION:

The legislation shall contain a list of options. The court shall choose the least restrictive, least intrusive, least stigmatizing and least depowering options.

REGISTRATION:

The appointment of an Associate or Substitute Decision Maker, or Guardian, shall be registered in the same manner, and in the same place as Representation Agreements and Registered Support Networks.

REVIEW AND APPEAL

An APPEAL is a review that is limited. It asks whether the first decision was decided rightly on the law and evidence.

A REVIEW asks whether the decision was right. New evidence can be provided.

1. APPEAL:

The adult shall have a right of appeal to the court, as provided in normal civil cases.

It is a matter of right, that is, the adult doesn't need the permission of the court to appeal, no "leave" is required.

The judge must give reasons for his decision, this shall be statutory. A record of the proceedings shall be available.

There shall be normal time limits.

There shall be notice about the appeal given to the people who appeared at the first hearing.

2. REVIEW:

(a) Periodic Review:

A periodic review assumes that the first order was correct.

There shall be a periodic review of the order to determine whether or not the circumstances have changed to justify a change of the order.

Periodic review shall be mandatory unless the Court determines otherwise.

The frequency of the review shall be determined by the Court in the first order.

A person shall have the right to have a review at any time before the periodic review, within limits.

(b) Reconsideration of the case:

The adult shall have the right to have the case reopened with new evidence.

The responsibility to show that the case needs to be reopened shall be on the person who wants to have the decision reconsidered.

The adult whose rights were affected by an order and who was either unable to attend the first hearing or was not served notice of the hearing has a right to have a reconsideration of the case.

In other cases, once the order has been made, the person asking for a reconsideration has an obligation to prove that it is a meritorious case.

TERMINATION, REVOCATION, VARIATION OF THE ORDER:

There shall be processes for termination, revocation or variation of an order.

FRAUDULENT TRANSACTIONS:

If the Decision Maker or Representative adult enters into a transaction with the adult for other than fair market value the transaction would be considered fraudulent and shall be voided.

If the adult who is or who becomes incapable enters into a transaction with any person who knows the condition of the adult the transaction will be considered fraudulent and shall be voided.

ACCESS TO LAWYERS:

Every adult has the right to be represented by a lawyer in the court process.

If an adult's estate cannot cover the cost of legal representation the legal aid tariff shall pay for the services of the adult's lawyer. The Legal Aid Tariff shall be expanded to cover these matters.

COSTS:

There may be cases where there is no money or insufficient money in the adult's estate to pay for the costs of applying to court. The legal aid tariff shall pay the costs.

There may be cases where there is sufficient money in the estate to cover the cost of the court proceedings, but the court may order that costs should be paid by the applicant.

There may be cases where the court would order that the costs of the proceedings should come completely out of the adult's estate.

TEMPORARY ORDERS:

Emergency provisions shall be available through a temporary order. These provisions shall be available if there will be irreparable harm to the adult or the adult's estate.

INSTRUCTING A LAWYER:

If the capacity of an adult is the issue in front of the court then the adult is deemed to have capacity to retain and instruct a lawyer. Upon notice the appropriate office shall ensure that the adult has legal representation. Guidelines need to be developed for lawyers working in this area.

THE ROLE OF THE ADVOCATE/HELPER IN THE LEGAL PROCEEDINGS:

The adult may have the support of a helper/advocate during the legal proceedings. The role of this helper is to give support and help so that the adult will feel comfortable in the court setting. The lawyer takes instruction from the adult. The role of the advocate is to assist the lawyer in understanding the instructions given by the adult but this does not extend to giving instructions for the adult. If an adult cannot communicate with a lawyer the process may be adjourned until the lawyer feels comfortable taking instructions from the adult.

ASSISTANCE, SUPPORT AND ADVOCACY:

The adult may need assistance, support and advocacy during a court process, instructing lawyers, and on appeal and review:

Every effort should be made to ensure that a court process is a last resort. That is, it is important that a court process proceeds only after all natural processes, provision of assistance and information, facilitation and mediation have been tried.

The adult might need someone to meet with them prior to a meeting with a lawyer to develop a list of questions, go to the meeting, take notes, clarify things, make sure the lawyer speaks in a way that the adult can understand, and remind the adult after the meeting about the information that was presented.

The adult needs someone to help the adult understand the process.

The adult needs money to pay a lawyer and needs to have an available lawyer. This is especially important outside the Lower Mainland.

The adult needs to know which lawyers like to practise this type of law.

The adult needs to have the case heard by a knowledgable, impartial judge.

The adult needs someone to explain what the adult's rights are and what choices they have, for example, the right to appeal or review and how to go about that. They might need assistance in obtaining, filling in and delivering forms.

The adult might need assistance with transportation to court and someone to be there during the court process explaining who the people are and what they are doing.

Every effort needs to be made to minimize any intimidation the adult may feel.

DECISION MAKING

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A FRAMEWORK DOCUMENT

DECISION MAKING

All adults shall entitled to the presumption of being capable of making decisions. This principle shall be reflected in the legislation.

WHO MAY MAKE DECISIONS?

The following people may make decisions on behalf of an adult:

1. a Court-appointed Decision Maker:
    a) Associate Decision Maker
    b) Substitute Decision Maker
    c) Guardian
2. Representative:
    a) Representative for Financial Affairs
    b) Representative for Personal Care
3. A Registered Support Network (in two specific circumstances):
    a) in urgent health care decisions
    b) as guardian ad litem
4. a Temporary Substitute Decision Maker in urgent health care or abuse, neglect, or self-neglect situations
5. the Public Trustee or Public Guardian may make decisions as outlined in this Framework Document.

THE AUTHORITY OF THE DECISION MAKER

Any decision making process must focus on the adult and enable the adult to participate completely in making decisions. The Decision Maker shall affirm the right of the adult to control their own lives and have information.

The Decision Maker shall make every effort to ascertain the adult's most recent expressed wishes. If there were no pre-expressed wishes the Decision Maker should, within a given time limit, be willing to consult family and friends, do a historical review, research the adult's values and beliefs and shall make decisions as if they were the adult. Only if they cannot ascertain this, then and only then, shall the substitute decision maker act in the adult's best interests.

Substitute decisions shall be made only where necessary and in the most responsible and principled manner. Decision Makers shall act with honesty, integrity, in good faith and only for the benefit of the adult.

AN ASSOCIATE DECISION MAKER:

A court appointed Associate Decision Maker assists with decision making but does not have the power and authority to actually make a decision. The adult has no loss of legal capacity.

This constitutes a form of judicially recognized supported, rather than substitute, decision-making and reflects the practices often followed by any adult faced with the need to make a decision. Generally, all adults consult with others - relatives, friends, colleagues, professionals - if it is thought they may have valuable advice. The appointment of an Associate is an official recognition of this normal activity.

There is, however, one significant difference: the advice may be given without invitation. Instead of waiting for the question "what do you think I should do?", an adviser may be proactive: "given the circumstances, I think you should do X, Y, and Z." Regardless, the actual decision is to be made by the adult - who retains the legal capacity to do so - and not by the person acting as Associate.

THE SUBSTITUTE DECISION MAKER:

A court appointed Substitute Decision Maker acquires what are, in effect, limited substitute decision-making powers. While decisions should be made in consultation with the adult, the latter loses his or her power to actually make decisions in prescribed areas. Court ordered Substitute Decision Making does involve a partial, or limited, and temporary loss of legal capacity.

Substitute Decision Making is to be distinguished from Guardianship, however, and the use of a different term helps to reinforce this distinction.

THE GUARDIAN:

A court appointed Guardian is required to do more than make decisions, he or she must be proactively involved in the adult's life. Guardianship is reserved for situations where an adult needs more than the assistance of an Associate or Substitute Decision Maker.

Guardianship is an absolute last resort. While there can be little doubt that the term is stigmatizing, it must be applied sparingly and only when there is no alternative. If this option is used the adult's loss of power should still be limited and this arrangement must still be viewed as temporary.

MONITOR:

The court may appoint a monitor. A court appointed Monitor shall ensure that the Decision Maker stops making decisions at the appropriate time. The monitor will ensure that the Decision

Maker is accountable to the adult and to the monitor. They will ensure that the Decision Maker is making decisions consistent with the adult's values, beliefs and expressed wishes.

CHOOSING THE CATEGORY:

Priority must be given to choosing the least intrusive, least restrictive, least stigmatizing and least depowering category. If, and only if, it is found that this category is insufficient to meet an adult's needs should the next category be contemplated.

DECISIONS OF THE PUBLIC GUARDIAN:

In certain circumstances the Public Guardian will be required to make serious personal care or health care decisions. Given the seriousness of these decisions, the Public Guardian must subject their decisions to very strict criteria.

Requests for decisions by the Public Guardian must be submitted in writing, be solidly documented and contain all information likely to clarify the decision-making process. This means that the requests must include tne opinion of the physician in charge, the health-care team, the ethics committee of the establishment (if possible), the family, people close to the adult, and the adult, to whatever extent the adult is able to express their wishes.

This information must be analyzed by a multidisciplinary team. The recommendations which result are submitted to the Public Guardian for a final decision. All those involved shall be informed of the Public Guardian's decision in writing. The Public Guardian is required to act in the sole interest of the adult and in the respect for his fundamental rights.

LEGAL ISSUES AND THE DECISION MAKER:

The Decision Maker(s) should understand that he or she will not incur legal liability when acting according to the duties, powers and limits set out in the court order or Representation Agreement.

The Decision Maker(s) may seek the guidance of the court, as set out in these recommendations.

The Decision Maker(s) shall be monitored as set out in these recommendations.

The court-appointed Decision Maker or Representative shall appear at the request of the Court to account for their decisions.

THE DECISION MAKER:

A priority should be to assist the adult to chose their own Decision Maker.

The highest priority for decision making is decisions made by a Representative or Decision Maker pre-designated by the adult, although this should not be automatic as this person may no longer be appropriate, for example, marriage breakdown caused by the adult's incapability to make decisions.

The adult may say who they do NOT want to be appointed as Decision Maker.

One or more Decision Makers or Representatives may be appointed or chosen. There may be different people for different decisions. For example, medical and financial decisions might be delegated to different people. A group of people might be appointed or chosen to make decisions together for the adult.

Family members and Decision Makers may be in a conflict of interest position but should understand the conflict position and its implications for the adult. They should seek guidance during apparent conflict through mediation, the Public Trustee or Guardian, or the court.

The Decision Maker should ideally have values consistent with the adult and be sensitive to the cultural needs of the adult.

The Decision Maker should be willing to be patient, involved and understanding. They should be willing to advocate, inquire on behalf of the adult and involve the adult throughout the decision making process.

Where there is nobody willing and able to be a Decision Maker, the adult shall receive assistance in order to establish a support network.

ASSISTANCE, SUPPORT AND ADVOCACY:

An adult may need assistance or support during an appointment of a Decision Maker:

The adult needs to be involved throughout the decision making process.

The adult needs a Decision Maker who knows them well, perhaps several people.

The adult needs someone who will ensure that the powers granted to the Decision Maker are consistent with their needs.

The adult needs to know the duties, powers and limits of the Decision Maker and might need help in order to understand those duties, powers and limits.

The adult needs to have someone who will challenge the choice of a Decision Maker who is unacceptable to the adult.

The adult needs to have someone different from the Decision Maker to whom they can turn when the Decision Maker is not making decisions consistent with the adult's values, beliefs and expressed wishes.

The adult needs to be able to say who they do NOT want to make decisions for them.

The adult needs the Decision Maker to be accountable to the adult and to someone else.

The appointment of a Decision Maker must be time limited and reviewable. The adult needs to have someone who will ensure that the Decision Maker stops making decisions at the appropriate time and manner.

OFFICE OF THE PUBLIC TRUSTEE AND GUARDIAN

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A FRAMEWORK DOCUMENT

OFFICE OF THE PUBLIC TRUSTEE AND PUBLIC GUARDIAN

INTRODUCTION:

The Office of the Public Trustee and the Office of the Public Guardian will have very separate functions, but there may be merit in having the offices combined. There will be a common entry point and in the interests of efficiency and cost saving, the two offices could be combined. However, the functions are separate.

There is the possibility that at times there will be decisions to be made about an adult's life where there is a difference of opinion between the Public Trustee and the Public Guardian. There must be collaboration and consultation and there must be conflict resolution mechanisms to resolve differences. There is concern that the Trustee's opinion will prevail over the Guardian's in a discussion about, for example, a proposed treatment or service for the adult, simply because money "talks".

The role of the Advocacy Office is clearly separate from the Office of the Public Trustee and the Office of the Public Guardian. This Office must be managed and housed apart.

All offices should be accessible: physically, intellectually, emotionally, psychologically, culturally and financially.

There must be regional offices or people that offer the same range and level of services as the main office.

Hours of operation must reflect the need. For example, the registry of Representation Agreements, Decision Making Orders and Registered Support Networks must be available 24 hours per day.

All correspondence should be supportive not intimidating.

Communication needs should be recognized and accommodated.

Board appointments and hiring policies should reflect the people being served. Elderly people and people with disabilities should be hired. Elderly people and people with disabilities should be included as Directors.

Staff and Board must understand the needs of people with various disabilities.

THE ROLES OF OFFICES OF THE PUBLIC TRUSTEE AND PUBLIC GUARDIAN:

The Office of the Public Trustee and the Office of the Public Guardian are a common entry point for adults who need support for decision making. There must be coordination with the Advocacy Office to ensure that each adult has the necessary support.

The Office of the Public Trustee will be responsible for financial matters. The Office of the Public Guardian will be responsible for matters affecting the adult's personal affairs, such as matters of daily living and health concerns.

These Offices would be responsible: to manage the Registry; for the screening of applicants to be Decision Makers; for the education and monitoring of Decision Makers; acting as Guardian in a default situation when no one else is available to do so; to support, educate and train Representatives, Decision Makers and Monitors; to receive reports and arrange for the investigation of abuse, neglect and self-neglect; to provide public education about Representation Agreements, Registered Support Networks, the Guardianship system and the work of the combined Offices.

These Offices would set standards for those who would act as court appointed Decision Makers, how Decision Makers should make decisions, and the kinds of reporting required from Decision Makers.

These Offices will design effective monitoring mechanisms for Decision Makers appointed by Court.

The Office will develop, implement and evaluate a supportive process for Registered Support Networks.

These Offices would have accessible review procedures for each step of the process, and the existence of these review procedures would be made known to people applying to be a Decision Maker, the family, the advocate, and the adult who is the subject of the application.

These Offices shall receive reports and arrange for the investigation of allegations of abuse, neglect or self-neglect of adults who are not capable of making decisions about that abuse, neglect or self-neglect.

These Offices would provide education and training of Representatives, Decision Makers and the public.

These Offices may refer the role of substitute decision making to community organizations, for example, PLAN.

FUNDING

The Offices will be non-profit.

The Offices of the Public Guardian, Public Trustee and Advocacy Office should be separate from government, but to some extent, funding will have to come from government. The Office of the Public Trustee can, to a certain extent be self funded, but the Office of the Public Guardian and the Advocacy Office will not be in a position to be self funded.

Any income arising from monies held for adults under the care of the Office of the Public Trustee should be kept in these Offices, and not forwarded to government.

The Office of the Public Trustee must have a policy to deal with accumulated funds of adults for whom it acts as Trustee for finances, so as to make it clear that the purpose of these monies is to benefit the adult, and not to retain funds to bolster interest accruals for the Office.

MONITORING THE OVERSEEING BODIES

These overseeing bodies should be run by community Boards of Directors. Each body should have clear standards, policies and self-monitoring mechanisms. The Boards of Directors should reflect the diversity of the populations to be served. Elderly people and people with disabilities should be included as Directors.

It should be the role of the Office of the Ombudsman to monitor the work of these Offices when the Public Guardian or Public Trustee makes decisions for the adult.